



# COUNCIL PUBLIC HEARING

Wednesday, June 02, 2021 at 5:15 PM

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## COUNCIL MEMBERS:

Mayor Rick Scholl  
Council President Doug Morten  
Councilor Patrick Birkle  
Councilor Stephen R. Topaz  
Councilor Jessica Chilton

## LOCATION & CONTACT:

<https://zoom.us/j/98597778580>  
Website | [www.sthelensoregon.gov](http://www.sthelensoregon.gov)  
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Phone | 503-397-6272  
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## AGENDA

### OPEN PUBLIC HEARING

#### TOPIC

1. Appeal of the Planning Commission's Denial of a Proposal to Divide Property into Two Parcels (Schlumpberger)

### CLOSE PUBLIC HEARING

### VIRTUAL MEETING DETAILS

**Join Zoom Meeting:** <https://zoom.us/j/98597778580>

**Meeting ID:** 985 9777 8580

**Dial by your location:** 1 669 900 6833

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The St. Helens City Council Chambers are handicapped accessible. If you wish to participate or attend the meeting and need special accommodation, please contact City Hall at 503-397-6272 in advance of the meeting.

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For more information or for an application, stop by City Hall or call 503-366-8217.

**CITY OF ST. HELENS PLANNING DEPARTMENT  
STAFF REPORT  
Appeal AP.1.21 (of Partition PT.1.21)**

**DATE:** May 26, 2021  
**TO:** City Council  
**FROM:** Jacob A. Graichen, AICP, City Planner

**APPLICANT:** Andrew and Lindsay Schlumpberger (also appellants)  
**OWNER:** same as applicant/appellant

**ZONING:** Suburban Residential, R10  
**LOCATION:** 160 Belton Road; 5N1W-34BC-1100 and 5N1W-34-201  
**PROPOSAL:** 2-parcel Partition

**SITE INFORMATION / BACKGROUND**

The subject property is located along the Columbia River, Dalton Lake and Belton Road. Belton Road provides access. It is developed with a detached single-family dwelling that, per the County Assessor data, was built in 1976.

This is an appeal of a reapplication of Partition PT.1.20, which was amended administratively, then denied by the Planning Commission on appeal AP.1.20, and then appealed to the Oregon Land Use Board of Appeals LUBA No. 2020-075. The Commission denied the matter based on an on-site sewerage system drainfield easement recorded in 1976 as Book 208, Page 404 Columbia County Clerk's records. After the LUBA appeal was filed that easement was eventually extinguished (Instrument No. 2020-12301) and the LUBA appeal was dismissed. The applicant then re-applied for the partition, which was denied by the Planning Commission based on inadequate access. The denial has been appealed; thus, this Appeal AP.1.21.

**PUBLIC HEARING & NOTICE**

**Public hearing** before the City Council: June 2, 2021

**Notice** of this proposal was sent to surrounding property owners within 200 feet of the subject property on May 4, 2021 via first class mail. Notice was sent to agencies by mail or e-mail on the same date.

**Notice** was published on May 12, 2021 in The Chronicle newspaper.

**APPLICATION COMPLETENESS**

This application was originally received on January 5, 2021. Staff identified missing information or other aspects that rendered the application incomplete and notified the applicant of the issue pursuant to SHMC 17.24.050 on January 20, 2021. The applicant provided revised or new information and the application was deemed complete on January 27, 2021. Based on



this alone, the 120-day rule (ORS 227.178) for final action for this land use decision would be May 27, 2021.

The Planning Commission's hearing on this matter took place on March 9, 2021. The record was left open for 14 days (to March 23, 2020) following the March 9<sup>th</sup> public hearing per request pursuant to ORS 197.763(6). As this was agreed upon by the applicant, this 14-day period is not subject to the limitations of the 120-day rule. An additional seven days (to March 30, 2020) was also granted to the applicant for final written argument, which does not contribute to the 120-day rule per ORS 197.763(6)(e). These actions add 21 days to the 120-day rule time period.

**Thus, the 120-day rule (ORS 227.178) for final action for this land use decision is June 17, 2021 (i.e., May 27, 2021 + 21 days).**

### AGENCY REFERRALS & COMMENTS

None based on the notice for this appeal.

### APPLICABLE CRITERIA, ANALYSIS & FINDINGS

**Important: this report is not a stand-alone document and is meant to be reviewed with the original decision (Partition PT.1.21) and other documents in the record.** Note that even though this is a new application (appeal of PT.1.21), the record for the previous matter (appeal of PT.1.20)—encapsulated in the LUBA No. 2020-075 record—is also attached as it was requested to be part of the record for this matter.

The aspects to consider for this partition application are more than usual. Despite that, the key issue of concern is access. It is anticipated that the appeal hearing will focus on this. Thus, this appeal report focuses on access. The Council has many options, but the obvious ones are:

1. **Approve with the conditions proposed in the PT.1.21 staff report (attached).** This is comparable to the original (PT.1.20 *amended decision*) decision by staff to approve the proposal with a minimum 24' wide x 30' long turnout at a specific location (blind corner/bend in Belton Road) abutting the subject property to address the access concern. The concern is the number of dwelling units and lots that already utilize an already substandard street system in the neighborhood.

To do this, the Council must accept the use of the city's *private* street standards within the Belton Road *public* right-of-way. The City has standards that allow exceptions to normal standards. However, the Planning Commission disagreed with applying the private road standard for a public street. This resulted in the Commission's denial of the matter.

2. Uphold the Planning Commission's denial of the application based on an overall inadequate street system. See attached PT.1.21 Findings of Fact and Conclusions of Law signed April 19, 2021 for a more detailed explanation.

The Council's consideration of this matter is important as your interpretation of the code carries much weight and we need to try to avoid findings that could haunt future decisions. For example, if the Council decides to approve this, it could be based on the *de minimis* nature of the proposal (i.e., a two-parcel land partition that creates one undeveloped parcel) whose impacts are offset by the turnout.

To explain, if we consider the 12-14 lots that utilize the street network of this neighborhood and that the average daily trip (ADT) rate for a single-family dwelling is approximately 10 ADT, the neighborhood's current potential total ADT is between 120 and 140 ADT. Adding a new undeveloped parcel would increase this to 130-140 ADT or about 7-8%. If the Council finds that the proposed turnout will make up for this increase, you could consider approval.

Conversely, if the Council finds the street network is too inadequate under its current condition (even with a turnout) it could side with the Commission's conclusions. Consider that much of the street network is only 11' wide and that a 10' wide driveway is only meant to accommodate up to 2 dwelling units/lots (20 ADT) and that there are about 9 to 11 lots beyond the first point (with no outlet) where the road narrows to 11'. This means that a road suitable for up to 20 ADT is serving up to 90 to 110 ADT or 350% to 450% in excess. If the partition was approved and a new parcel added to the transportation network's burden, the excess would be 400% to 500%.

If the Council denies the request (i.e., upholds the Planning Commission's denial), addressing the alleged shortcomings of the Planning Commission's findings to deny the proposal as set forth by the applicant with this appeal will be necessary.

One of the arguments the applicant stresses that supports approval of this application is ORS 197.522. This state law is included in this report for Council review and consideration:

**197.522 Local government to approve subdivision, partition or construction; conditions.**

(1) As used in this section:

(a) "Needed housing" has the meaning given that term in ORS 197.303.

(b) "Partition" has the meaning given that term in ORS 92.010.

(c) "Permit" means a permit as defined in ORS 215.402 and a permit as defined in ORS 227.160.

(d) "Subdivision" has the meaning given that term in ORS 92.010.

(2) A local government shall approve an application for a permit, authorization or other approval necessary for the subdivision or partitioning of, or construction on, any land for needed housing that is consistent with the comprehensive plan and applicable land use regulations.

(3) If an application is inconsistent with the comprehensive plan and applicable land use regulations, the local government, prior to making a final decision on the application, shall allow the applicant to offer an amendment or to propose conditions of approval that would make the application consistent with the plan and applicable regulations. If an applicant seeks to amend the application or propose conditions of approval:

(a) A county may extend the time limitation under ORS 215.427 for final action by the governing body of a county on an application for needed housing and may set forth a new time limitation for final action on the consideration of future amendments or proposals.

(b) A city may extend the time limitation under ORS 227.178 for final action by the governing body of a city on an application for needed housing and may set forth a new time limitation for final action on the consideration of future amendments or proposals.

(4) A local government shall deny an application that is inconsistent with the comprehensive plan and applicable land use regulations and that cannot be made consistent through amendments to the application or the imposition of reasonable conditions of approval.

### CONCLUSION & RECOMMENDATION

**The Council needs to consider the materials in the record and any testimony received both in support and opposition (or neutral) carefully when drawing your conclusion(s).**

#### Attachment(s):

- Preliminary plat dated January 25, 2021 with notes added by staff to assist with Council review
- Appeal AP.1.20 attachment (*created by city staff*)
- Letter from Kathleen Ward received May 26, 2021
- Letter from Daniel Kearns dated May 24, 2021
- Letter from Daniel Kearns dated May 7, 2021 (bias and prejudgment concern)
- Statement of grounds for appeal from the applicants/appellants received April 29, 2021
- PT.1.21 Findings of Fact and Conclusions of Law signed April 19, 2021 (Planning Commission)
- Applicant's final written argument via Damien Hall dated March 30, 2021
- Applicant's final written argument via the applicant received March 30, 2021
- Email from Laurie Brownlow dated March 16, 2021
- Letter from Danial Kearns dated March 16, 2021
- Letter from Robin Nunn received March 16, 2021
- Email from Geoffrey Parker dated March 16, 2021
- Letter from Kathleen Ward received March 16, 2021
- Letter and attachments from Andrew Schlumberger received March 9, 2021
- Letter from Danial Kearns dated March 8, 2021 (includes request for LUBA record inclusion into this application)
- PT.1.21 Staff Report dated March 1, 2021 with the following attachments:
  - Original application materials – January 27, 2020 (when application deemed complete):
    - Preliminary plat dated January 25, 2021
    - Belton Road S.T.E.P. system analysis memo dated December 13, 2019
    - Environmental Assessment (wetland/waters delineation) dated January 30, 2020
    - Instrument No. 2020-12301, easement extinguishment and relinquishment
    - Letter from CRFR Fire Inspector dated November 30, 2020
    - Letter from Scappoose Fire District dated May 29, 2020
    - Estimate from Triton Lawn and Yard Maintenance dated May 27, 2020
    - Letter from Jerry and Lynn Belcher (undated)
    - Letter from Larry Hough dated June 7, 2020
    - Letter from Michelle and Alexander Damis dated January 11, 2021
  - Memo from Damien Hall dated/received February 5, 2021
  - Letter from Jerry Belcher dated February 24, 2021
  - Letter from Larry Hough dated February 24, 2021
  - Appeal AP.1.20 attachment (*created by city staff*)
  - Private drive/access easement exhibit (*created by city staff*)
- Record of LUBA No. 2020-075 (**note this has its own table of contents – 269 pages total**)



✓ PRELIMINARY PLAT  
✓ NOTES ADDED

*Sensitive Lands Buffers were measured along the slope*

46060 SQ.FT.  
22565 SQ.FT. OUTSIDE  
OF SENSITIVE LANDS

FIR REPLANTED HERE  
TO BE REMOVED

OREGON  
JULY 26, 1985  
DAVID E. REYNOLDS  
2157

**Reynolds  
Land Surveying, Inc.**  
32990 Stone Road  
Warren, Oregon 97053  
(503) 397-5516

Tree Plan & Road Improvement Plan  
For  
Andrew & Lindsay Schlumpberger  
Situated In The N.W. 1/4  
Section 34, T.5N., R.1W., W.M.  
City of St. Helens  
Columbia County, Oregon  
January 25, 2021

TO BE REPLANTED  
WITH 3 MAPLE TREES  
IN WESTERLY SENSITIVE  
LANDS BUFFER

TO BE REMOVED  
TO BE REPLANTED WITH MAPLES  
IN WESTERLY SENSITIVE LAND BUFFER

## Tree Plan

*Denotes tree with species and size as noted.*

*Trees to be removed are as noted and will be replaced with same species in Westerly Sensitive Lands Buffer.*

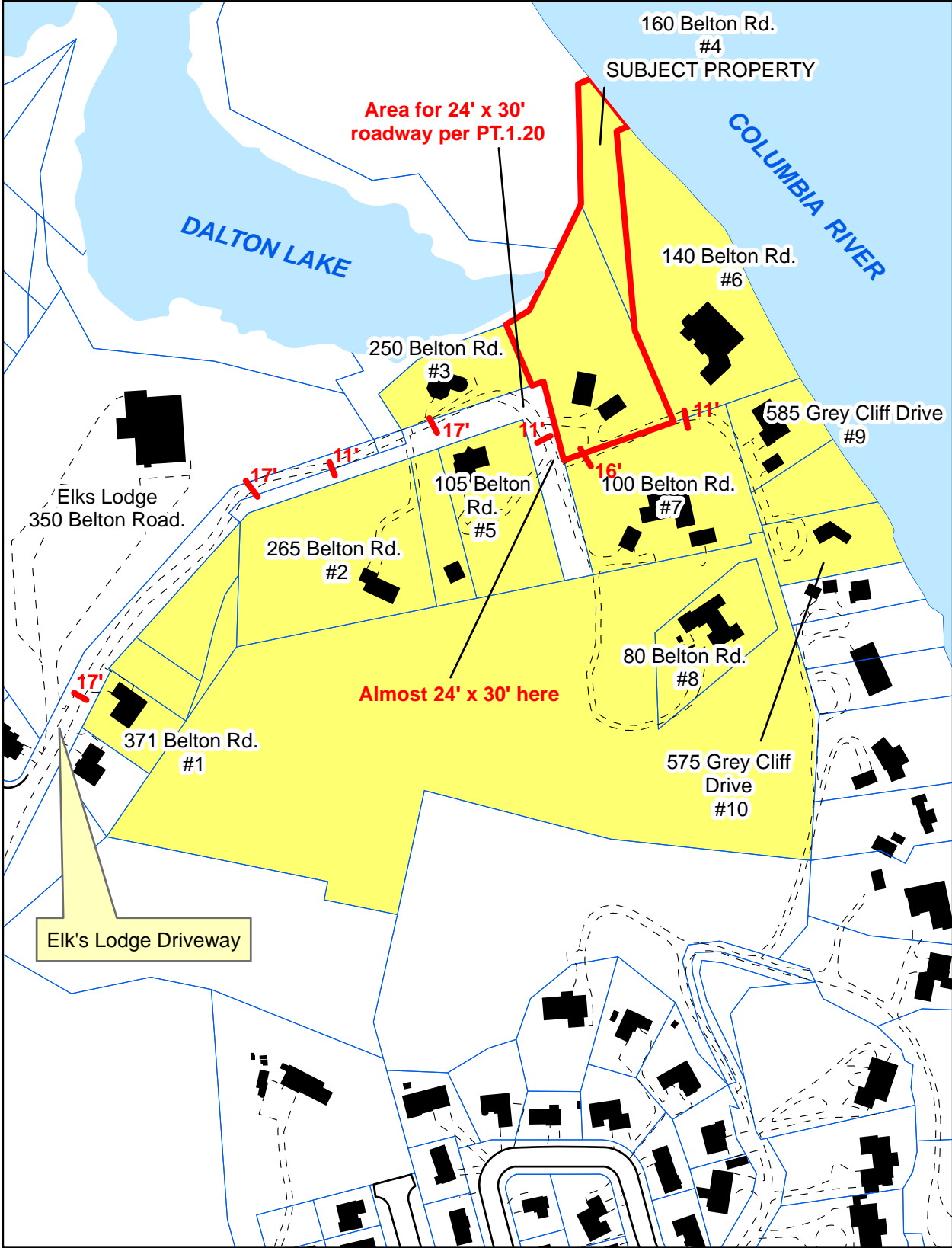
Existing stumps are as noted and will be replaced with same species in the Westerly Sensitive Lands Buffer.

Existing trees within 20' of any construction areas will be protected with 4' construction zone safety fencing.

ALSO AREA OF  
PUBLIC PRESSURE  
SEWER 92-6911

**FILE: AP.1.20  
ATTACHMENT**

## Number of Existing Dwellings Currently Accessed Via Belton Road After The Elks Lodge Driveway & Road Width Measurements





RECEIVED

MAY 26 2021

CITY OF ST. HELENS

## Request To Deny Partition of Property at 160 Belton Road

My name is Kathleen Ward at 140 Belton Road, and I am the landowner on two sides of the Schlumpbergers' property, including some of the beach. My two nephews and my niece are co-owners with me of the wooded property and beach toward Columbia City on the opposite side of Schlumpbergers' property.

Since I am a very peace-loving person I want to make it clear at the outset, that in no way do I mean to be unfriendly to my neighbors. My request that the property not be divided, is nothing personal against them, but only personal in regard to their project. This area has been a friendly, peace-loving, nearly isolated community for many years and if Andrew and Lindsay would choose to be content to live in the beautiful home they bought from Sorensons, peace would again reign among all of us.

So I'd like to help you understand why the appeal for land partition is so devastating to us three families most affected. True, other neighbors have not dissented, but they are not immediately impacted in the ways we are.

Whereas I have river view of the beach property with no buildings in sight, a proposed house will be in full view from the bedroom and living room on the north-west side of my home. Robin Nunn, my daughter and her family will not only see the house but the clearing for building will open up Columbia City's houses and lights, especially at night. And, the proposed building site, unless shifted, obliterates Tracey Hill's only, narrow view of the river.

In 1952 my mother, Berenice Brownlow, and her business partner Jessica Longston acquired this whole area from below the Lemont claim where Belton Road begins, almost to Sixth Street, over toward Grey Cliffs and then along Dalton Lake to Columbia City. It included the front part of the Quarry, now known as The Botanical Gardens, which Mother eventually donated to the city. When she built her house (100 Belton Road) there was no other development anticipated. There was only a dirt driveway to her house at that time. Later, she began to sell land for isolated private dwellings.

When Mother gave land to my brother Charles Brownlow and to me it was an unwritten understanding that neither of us would build any structures on the beach. After all, we had found Native American artifacts there and to our knowledge, the beach had flooded twice since the land was ours. The lake and the river were one. It made no sense to build there. Besides, it seemed almost like sacred land.

So after my brother's job required that he move to Alaska in 1988, he sold his house (160 Belton Road) to the Sorensons. Later, they asked to buy a strip of my beach land between their house and the river. Because they and I had agreed nothing be built on that land, I sold it to them. Years later, serious health issues came up and the Sorensons needed to move. They sold to Schlumpbergers who had given the impression to

Sorensens that they were delighted with their new house and spoke of how they would bring up their young son there. Only later, did they admit to us that they would not have bought the house had it not been for the prospect of building on the beach. And Sorensens said they would not have sold to anyone wanting to develop the beach land. They wanted the stunning river view from their house preserved unhampered.

The problems with the road have been researched and publicly discussed at great length at each of the two previous Planning Commission's meetings after which the partition of this property was denied--- twice! But I do want to state an unmentioned fact, that even before there were so many houses down here, I was involved in a head-on car crash on Belton Road. I suffered a broken knee cap. I am grateful that the pessimistic prognosis of never being able to walk again, turned out to be false! The accident had happened in October, 1968 when I was taking my youngest child to my mother's house. It was at a curve near where the Elks Lodge would later be built. And that was before serious development had begun!

But now, the area has grown until we face a tough situation. When do we say, "Enough is enough"! One of the problems to surmount may be the sewage system. My house is on a STEP system wherein sewage is pumped up the hill along my driveway to the main line. It worked well until the last several years. The company, Schlumpberger Consulting Engineering, Inc. in December of 2019 stated that "even if all pumps are on at once there is capacity for a minimum of twelve connections or maximum of twenty." But I have had a burned out pump along with other unsolved problems which seem to occur, not with my system, but further up the line. So far, the problem has not been solved.

I am not sure exactly where Schlumpbergers propose the road to their new parcel, but since they have been clearing land between my house and theirs, I presume they plan their ingress road alongside my road, hopefully not on it, even though Sorensens and I signed a non-exclusive easement. This will affect my privacy greatly because recent clearing has opened up the area between our two houses.

Lastly, I have another concern about partitioning the parcel in question. Although some years back, the city acquired land around Dalton Lake, I retained the buffer of land between Columbia City and along the river, to the edge of property abutting Schlumpbergers' property. The entire area is truly a sanctuary for wild life! I don't want to see that encroached upon or spoiled by building activity or future development close by. Deer, herons, Canada Geese, and other species of living creatures count that area as their home. Osprey and eagles visit and park in the tall firs that will probably have to come down should building occur.

Although I can no longer safely navigate the steep bank by my home, to go down to the water's edge, I enjoy the beach and river view daily with my eyes. I constantly enjoy watching especially the herons taking a left turn right outside my windows, then flying

over the beach and disappearing into the woods. So many creatures live in that area, it should be preserved as a wild-life sanctuary. Once its isolation is gone--- it's gone!

There are times when just because a person *\*can\** do something, doesn't mean that he should. This beach property is probably one of the last, if not *\*the\** last piece of undeveloped land along the river. I know of no other city along the Lower Columbia with such a pristine treasure. Think of your responsibility to preserve such a heritage, abutting a wild life preservation area and next to Dalton Lake which belongs to you---to the city of St. Helens. If it is still appropriate in years to come there is the possibility of perhaps offering the wooded area along the river, between Columbia City and St. Helens and between Dalton Lake and the Columbia River to our City ---that is, if it is allowed to remain a wild life sanctuary, as it is now.

Thank You,  
Kathleen Ward



# Reeve Kearns PC

Attorneys at Law

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Portland, Oregon 97205  
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Daniel H. Kearns  
Direct Dial: 503-997-6032

May 24, 2021

St. Helens City Council  
St. Helens City Hall  
265 Strand Street  
St. Helens, OR 97051

**VIA HAND DELIVERY**

## **Re: Partition PT.1.20 (Schlumpberger)**

Dear City Council:

I represent Tracey Hill, a resident of Belton Road who has been mildly, but persistently, opposed to the Schlumpbergers' efforts to partition their river-front property to construct a new house on the beach. Please accept this letter into the record and affirm the Planning Commission's denial of this ill-conceived proposal.

Although partitions are seldom consequential or controversial, even a cursory review of the Planning Commission's decision in this matter or a ride down Belton Road will quickly explain why this partition was justifiably denied: Belton Road is one of the most sub-standard roads in the City of St. Helens, and it simply cannot accommodate any more vehicle trips.

Belton Road is designated on your Transportation System Plan as a local street, the standards for which are a 50-foot right-of-way and a 34-foot paved width. Belton Road has sufficient ROW width (50 feet), but in contrast to this city standard its pavement width is mostly 11 feet, which is severely deficient to the point of being a traffic safety hazard for pedestrians, bicycles and, of course, motor vehicles, especially with a 90° bend in the road.

There are already 10 homes that take access off of Belton Road and its extension Gray Cliff Drive, which together constitute an ~1,800-foot dead-end road. On average, a single-family home generates 10 vehicle trips per day, which equates to 100 vehicle trips per day generated by the current homes on Belton Road. Additionally, staff estimates there are 2-4 undeveloped lots along Belton Road that could develop with single-family homes by right. Finally, under the City's implementation of HB 2001 from the 2019 Regular Legislative Session (Ordinance No. 3264), duplexes are allowed by right wherever single-family homes are allowed. This means that the relatively small population using Belton Road in its substandard condition could easily increase substantially without any land use approval from the City. The Schlumpbergers ask for one more on top of that.

In light of this legal reality and Belton Road's severely substandard condition, the Planning Commission saw no justification in granting discretionary approval for any additional homes. Thankfully, no one has been killed or hurt on Belton Road, but public safety was a primary concern in the Planning Commission's decision and the critical deficiency that currently exists. To his credit, City Planner Jason Graichen tried to strike a compromise of a reduced 20-foot wide street standard in combination with a turn-out at the 90° bend as a way to alleviate the traffic safety hazard. But, Belton Road's pavement width deficiency was too severe, and the possibility of so many additional homes that could be constructed by right was too substantial. In the end the Planning Commission could not justify setting such a precedent, which would quickly erode the City's ability to require compliance with its street standards in the future.

Additionally, to approve a second buildable lot for this property owner would require a variance to the City's street standards – something the Schlumpbergers have not applied for. The Planning Commission could not approve something that was not applied for and neither can the City Council. To approve a street width variance, you first need an application, and second, the applicant has to demonstrate compliance with the variance approval criteria and follow the process in SHMC 17.152.030(5)(b). Absent a variance application, the City lacks the authority to approve one.

Even if the Schlumpbergers were to apply for a variance, compliance with the approval criteria is not easy. Approval requires you to consider the following criteria in SHMC 17.152.030(5)(a) for street standard variances:

- (i) The type of road as set forth in Figure 19, Road Standards
- (ii) Anticipated traffic generation;
- (iii) On-street parking needs;
- (iv) Sidewalk and bikeway requirements;
- (v) Requirements for placement of utilities;
- (vi) Street lighting;
- (vii) Drainage and slope impacts;
- (viii) Street tree location;
- (ix) Planting and landscape areas;
- (x) Safety for motorists, bicyclists, and pedestrians; and
- (xi) Access needs for emergency vehicles;

Approving a street width variance for Belton Road – at 11 feet wide – based on the argument that just one more home would have a *de minimis* impact sets a dangerous precedent for St. Helens that would make it impossible to deny a variance in the future under virtually any circumstances. Again, there simply was no justification to compromise St. Helens standards so severely, especially if it would set such a bad precedent. That situation has not changed.

The emphasized factors from SHMC 17.152.030(5)(a) are particularly important in this case because Belton Road is so extraordinarily narrow and sight-distance limited. The local Fire District chief stated that his vehicles could get through “if needed,” and the new home would have fire suppression sprinklers. However, the obvious safety hazard for pedestrians, pets and

Reeve Kearns P.C.

May 24, 2021

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bicycles still exists, and most fire district calls are for medical emergencies. Fire suppression sprinklers do not help medical emergencies. Because there has been no variance application, and no one has addressed the variance criteria, the City cannot approve a variance. Belton Road simply does not meet the 20-foot width standard, and its current condition constitutes a public safety hazard that precludes the addition of an eleventh house on this ~1,800-foot dead-end road.

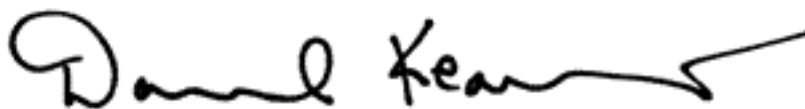
The applicant suggests that to require an up-grade to Belton Road to even a 20-foot width would be disproportionately expensive and an unconstitutional condition. That may be so, and that is why denial is the only lawful option unless or until the applicant applies for and obtains a variance, or Belton Road's deficiency is corrected through an LID (local improvement district) or some other means.

The key Oregon takings case that the applicants failed to cite in the Planning Commission hearing is *Hill v. City of Portland*, 293 Or App 283, 428 P3d 986 (2018), in which the Court of Appeals invalidated a permit that Portland approved with a disproportionately expensive condition of approval. *Hill* is instructive for the present situation. The *Hill* Court held that, to pass muster with the Fifth and Fourteenth Amendment Takings prohibitions, there must be a "rational nexus" between a code basis that justifies denial and the condition imposed so that, if the condition is not met, the project can be denied. Thus, the Court of Appeals expressly acknowledged that denial must be an option when a code requirement is not met.

In the *Hill* case, instead of denying the proposal, Portland approved it with an unlawful condition, one that was disproportionately expensive to meet. In the present case, the City must deny this proposal because the cost of this one applicant bringing Belton Road up to city standards is likely too expensive and not constitutional. The Director's decision that the Planning Commission reviewed was not consistent with the Code on this point and would have endangered public safety by adding an eleventh house to a road only 11 feet wide. Likewise, the applicant's suggested solution of ignoring Belton road's unsafe condition by adding yet another house to it, is also not consistent with the code and will set an extremely unwise precedent in how the City reviews variance requests.

Because Belton Road is unsafe, non-compliant, way too narrow, and the cost of making it compliant too expensive, denial is the only lawful option. Given the number of new homes that can already be constructed along Belton Road without City land use approval, it makes no sense to grant discretionary approval to one more on top of that when you don't have to. Please deny this appeal and affirm the Planning Commission's denial of this partition request. Thank you.

Sincerely,



Daniel Kearns

cc: Client

# Reeve Kearns PC

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May 7, 2021

Timothy Ramis  
St. Helens City Attorney  
Jordan Ramis PC  
2 Centerpointe Dr. 6<sup>th</sup> Floor  
Lake Oswego, OR 97035

**SENT VIA E-MAIL**

**Re: Schlumpberger appeal – City Council hearing on June 2, 2021  
Bias and Prejudgment by the Mayor (Rick Scholl)**

Dear Tim:

I represent an affected neighbor and party in a land use appeal that is set for hearing before the St. Helens City Council on June 2, 2021 (PT.1.21 – Schlumpberger partition appeal). This is the Schlumpbergers' second attempt to partition their property on Belton Road, and the Planning Commission again denied the request. Applicants Andrew and Lindsay Schlumpberger have appealed to the City Council seeking to overturn the Planning Commission denial.

I hereby request that Mayor Rick Scholl recuse himself from participating in this appeal and remove himself from all aspects of this matter due to his open bias and prejudgment. I do not believe that Mayor Scholl can be impartial in this matter, and I fear that his bias will taint other councilors and this proceeding as a whole. There are two bases for my request.

First, Mr. Scholl's sister is married to Ron Schlumpberger, Andrew Schlumpberger's father, which makes the Mayor's sister the applicant's stepmother. Ron Schlumpberger is actively involved in his son's application, is a financial and political backer of the partition request and has been active in the Schlumpbergers' efforts to partition their property and construct a new house on this site. The Mayor's sister, who is the applicant's stepmother, has been actively agitating with her brother, the Mayor, in support of the Schlumpberger application. This constitutes an ex parte contact, but has also fueled a bias in the Mayor in favor of the applicants.

Second, the Mayor was overheard actively complaining loudly about the Planning Commission's previous and most recent decisions to deny the partition, and the Mayor has been observed and overheard expressing extremely strong opinions that the Schlumpbergers' partition request should be approved. Again, this is clear evidence of a strong bias and prejudgment of the

Reeve Kearns P.C.

May 7, 2021

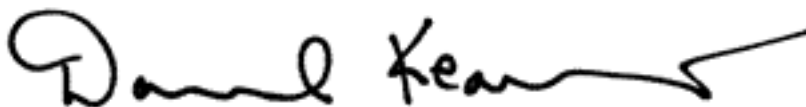
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appeal in favor of the applicants, and I do not believe that my client will receive a fair and impartial hearing if the Mayor remains involved.

This is strong evidence that the Mayor is involved in the application, at least as a supporter, and that he is willing to berate City staff and others who might present an obstacle to, or oppose, approval of the partition request. From this, it is clear that the Mayor is biased and has prejudged the application, due to his familial relationship with the applicants, and should recuse himself from any participation in this matter.

Please communicate with the Mayor about this and, by copy of this letter to the City Planning Director, I ask that this letter be made part of the official record of this application. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Daniel Kearns". The signature is fluid and cursive, with a long horizontal stroke at the end.

Daniel Kearns

cc: Jacob Graichen, City Planner  
John Walsh, City Administrator  
Client

APR 29 2021

CITY OF ST. HELENS

**STATEMENT OF GROUNDS FOR APPEAL - PARTITION PT.1.21**

Staff, applicant, and all parties testifying to the Planning Commission ("PC") agreed that the proposed one-lot residential partition is an allowed use in the R-10 zone. The only matters at issue relate to Belton Road, the narrow public street that provides access to the partition site. Specifically, the questions at issue are twofold:

- Does the current paved width of Belton Road preclude a finding that, on the whole, "adequate public facilities are available to serve" the proposed one-lot partition? St. Helens Municipal Code ("SHMC") 17.140.040(3); and
- If so, what improvements to Belton Road are necessary to ensure that, on the whole, adequate public facilities are available to serve the single new lot that is proposed?

The PC considered the issue, declined to condition approval on improvement of Belton Road, and instead denied the one-lot partition. The decision of the PC is inconsistent with the SHMC, state law, and federal law, for the following reasons.

1. The PC erred by finding that the current paved width of Belton Road precludes adequate public facilities from being available to the site, as required by SHMC 17.140.040.3. For streets, the measure of adequacy is the new trips generated by a proposal. See SHMC 17.140.040(3) ("a traffic impact analysis ["TIA"] shall be prepared, as applicable, pursuant to Chapter 17.156"). The proposed one-lot partition would generate approximately 10 average daily trips, well below the threshold triggering a TIA (see SHMC 17.156.030(3)(a) exemption for small proposals generating less than 250 average daily trips). The Findings & Conclusions ("Findings") of denial fail to address or even consider the capacity of the street system to accommodate 10 additional trips.
2. Instead of considering trip generation as required under SHMC 17.140.040(3), the PC only considered whether Belton Road meets the SHMC pavement width standards, denying the partition solely because the paved area of Belton Road is not wide enough. Thus, the PC applied the wrong standard by impermissibly replacing the SHMC 17.140.040(3) standard for availability of adequate facilities with the pavement width standards from SHMC 17.152.
3. The PC then contradicts itself by finding that even if Belton Road were widened to meet the pavement width standards, adequate public facilities still would not be available to serve the one-lot partition. The internal inconsistency of the PC decision is striking, on one hand requiring additional pavement width to satisfy the adequate facilities standard and then finding that meeting the minimum pavement width would not satisfy the adequate facilities standard. The Findings contain no discussion that addresses this conflict and does not attempt to explain why a street consistent with City standards is not adequate.
4. The PC decision and Findings ignore substantial evidence in the record that Belton Road can accommodate the trips generated by the proposal. Such evidence includes:

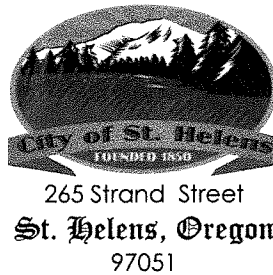
- a. Testimony from multiple parties (both for and in opposition to the partition) that there is no traffic or congestion on Belton Road, including testimony from a Belton Road resident that only twice a month does he passes another vehicle on Belton Road when coming and going from his home.
- b. Testimony from multiple parties (again, both for and in opposition to the partition) that there is no history of accidents on Belton Road, including a review of accident by local law enforcement. The sole exception is that one supporter of the partition recalled a single fender bender on Belton Road in his 30+ years of living on the block.
- c. Testimony and documentation that the narrow pavement width of Belton Road does not make the road dangerous, including statements from Belton Road residents and a whitepaper establishing that narrow roads are more safe because drivers have clear visual queues to proceed slowly.

The record contains no contradictory evidence.

- 5. The PC erred by relying on speculative future development to deny the one-lot partition. The Findings deny the one-lot partition because of potential future development that may or may not occur. The adequacy of public facilities at SHMC 17.140.040(3) is determined based on existing conditions and the proposed development and does not require a speculative analysis of hypothetical future development. Consistent with this understanding, the Findings determine the availability and adequacy of all other public facilities (utilities, water, sanitary sewer, and stormwater) without analysis of hypothetical future development.
- 6. The PC erred by abandoning its previous pattern of approving residential development on Belton Road, without any facts, data, or evidence of changed circumstances. Historically, the City has allowed creation of residential lots along Belton Road. The PC findings do not identify any changed circumstances causing the unavailability of adequate public facilities or changed standards giving rise to this departure from the City's pattern of approvals.
- 7. The PC erred by applying private street standards to a public road. The findings expressly apply the private street standards to Belton Road and find that the number of dwellings on Belton Road exceeds the private street standards. *Findings*, p. 6 of 9. Belton Road is a public road and the private street standards, including limitations on the number of dwellings, are not applicable.
- 8. The PC erred by denying the one-lot partition instead of approving it conditioned on street improvements, despite the state law requirement that all residential partitions be approved with conditions if possible. See ORS 197.522 ("local government, prior to making a final decision on the application, shall allow the applicant to offer an amendment or to propose conditions of approval that would make the application consistent with the plan and applicable regulations," and shall only deny an application that "cannot be made consistent through amendments to the application or the imposition of reasonable conditions of approval."). This Findings do not address this state law issue that was raised to the PC.

9. The PC erred by denying the one-lot partition in violation of HB 2001, which prohibits Oregon local governments from applying land use regulations in a fashion that prohibits the development of needed housing in residential zones.
10. The PC erred by violating the rough proportionality standard of *Dolan v. City of Tigard*, 512 US 374, (1994), by denying the one-lot partition. See *Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013) (applying the *Dolan* rough proportionality standard to denial of a permit). A local government cannot withhold approval of a permitted use contingent on an applicant making off-site public improvements that are not roughly proportional to the impact of the proposed development. The PC denied the partition instead of accepting applicant's proposed improvements to Belton Road even though the cost of additional street improvements beyond the partition site frontage is not roughly proportional to the limited impact of the one-lot partition (approximately 10 daily trips).





## NOTICE OF DECISION

April 19, 2021

**RE: Partition, PT.1.21**

Dear applicant/interested party,

The **Planning Commission** for the City of St. Helens **denied** the application referenced above for a 2 parcel partition at 160 Belton Road.

All required notices pursuant to SHMC 17.24.130 have been met. The adopted findings of fact, decision, and statement of conditions, as applicable, are on file at City Hall and are available for review during normal business hours. Copies are available for a nominal charge.

This decision of the **Planning Commission** may be appealed to the St. Helens **City Council** by a party with standing to appeal pursuant to SHMC 17.24.290. The deadline for filing an appeal application with the required fee is **5pm the 14<sup>th</sup> day starting after the day of mailing this decision. If the 14<sup>th</sup> day falls on a legal holiday for the City or a weekend, the next business day for the City is the appeal deadline.** If you feel that the decision meets the requirements for an amended decision pursuant to SHMC 17.24.275 and you wish to apply for such, the deadline for a proper amended decision application with the required fee is the same as that of the appeal. If no appeal or amended decision is filed this decision becomes effective as of the deadline noted herein.

If you have any questions, please contact this office. Some information such as the St. Helens Municipal Code (SHMC) can also be obtained at the City's website: [www.ci.st-helens.or.us](http://www.ci.st-helens.or.us).

Respectfully yours,

Jacob A. Graichen, AICP  
City Planner

**CITY OF ST. HELENS PLANNING DEPARTMENT**  
**FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
 Partition, PT.1.21

**APPLICANT:** Andrew and Lindsay Schlumpberger

**OWNER:** same as applicant

**ZONING:** Suburban Residential, R10

**LOCATION:** 160 Belton Road; 5N1W-34BC-1100 and 5N1W-34-201

**PROPOSAL:** 2-parcel Partition

**SITE INFORMATION / BACKGROUND**

The subject property is located along the Columbia River, Dalton Lake and Belton Road. Belton Road provides access. It is developed with a detached single-family dwelling that, per the County Assessor data, was built in 1976. The subject property did not abut the Columbia River until 2004 when a Lot Line Adjustment was done that resulted in today's lot configuration, now proposed to be divided into two.

This is a reapplication of Partition PT.1.20, which was amended administratively, then denied by the Planning Commission on appeal AP.1.20, and then appealed to the Oregon Land Use Board of Appeals LUBA No. 2020-075. The Commission denied the matter based on an on-site sewerage system drainfield easement recorded in 1976 as Book 208, Page 404 Columbia County Clerk's records. After the LUBA appeal was filed that easement was eventually extinguished (Instrument No. 2020-12301) and the LUBA appeal was dismissed. The applicant has now reapplied for the same 2-parcel Partition.

Pursuant to St. Helens Municipal Code 17.24.280(1) a waiting period of at least 12 months is required before resubmittal of the same application which was originally denied at the local level. The notice of the Planning Commission's denial of the matter (AP.1.20) was issued on July 7, 2020. However, one exception to this 12-month resubmission limitation is if there has been a substantial change in the facts. The city determined that removal of the "drainfield easement" is a justifiable change in facts to allow reapplication within the one-year time period.

Partitions are normally administrative decisions. Pursuant to SHMC 17.24.090(2), the Planning Director may refer any application for review to the Planning Commission. Staff chose to refer this to the Commission due to their involvement in the appeal of the original application and because public hearings are better platform for public testimony which was well represented in the original application and its appeal.

**PUBLIC HEARING & NOTICE**

**Public hearing** before the Planning Commission: March 9, 2021

**Notice** of this proposal was sent to surrounding property owners within 200 feet of the subject property on February 17, 2021 via first class mail. Notice was sent to agencies by mail or e-mail on the same date.

**Notice** was published on February 24, 2021 in The Chronicle newspaper.

### APPLICATION COMPLETENESS

This application was originally received on January 5, 2021. Staff identified missing information or other aspects that rendered the application incomplete and notified the applicant of the issue pursuant to SHMC 17.24.050 on January 20, 2021. The applicant provided revised or new information and the application was deemed complete on January 27, 2021. Based on this completion date, the 120-day rule (ORS 227.178) for final action for this land use decision would be May 27, 2021.

At the March 9, 2021 public hearing, there was a request to leave the record open for additional written testimony and for final written argument. The record was left open for 14 days for additional written testimony (first 7 days) and response to that testimony (second 7 days) per ORS 197.763(6)(c). As this extension was agreed to by the applicant at the hearing, this 14-day period is not subject to the 120-day rule per ORS 197.763(6)(d).

An addition 7 days (third 7 days) was also included for the applicant to submit final written argument per ORS 197.763(6)(e). This seven-day period is not subject to the limitations of the 120-day rule.

Thus, the 120-day rule for final action for this land use decision is May 27, 2021 plus 21 days, or June 17, 2021.

### APPLICABLE CRITERIA, ANALYSIS & FINDINGS

#### **SHMC 17.140.040 – Partition approval criteria.**

A request to partition land shall meet all of the following criteria (1-5):

**(1)** The proposal conforms with the city's comprehensive plan;

**Finding(s):** There is no known conflict with the specific Comprehensive Plan policies identified in Chapter 19.12 SHMC.

There is no known conflict with the addendums to the Comprehensive Plan which includes Economic Opportunities Analysis (Ord. No. 3101), Waterfront Prioritization Plan (Ord. No. 3148), the Transportation Systems Plan (Ord. No. 3150), the Corridor Master Plan (Ord. No. 3181), the Parks & Trails Master Plan (Ord. No. 3191), the Riverfront Connector Plan (Ord. No. 3241), and the Housing Needs Analysis (Ord. No. 3244).

**(2)** The proposed partition complies with all statutory and ordinance requirements and regulations;

**Finding(s):** New property lines do not create any new substandard compliance with the **R10 zone standards**, except as described herein.

There is **area of special flood hazard** (i.e., 100 year flood) associated with the Columbia River. Pursuant to SHMC 17.46.050(1)(g)(ii) this Partition must:

- (A) Be consistent with the need to minimize flood damage.
- (B) Have public utilities and facilities such as sewer, gas, electrical, and water systems, located and constructed to minimize or eliminate flood damage;
- (C) Have adequate drainage provided to reduce exposure to flood hazards.

Based on the Flood Insurance Rate Maps (FIRMS), there appears to be adequate area outside of the floodplain to meet these requirements. It is possible that any development of Parcel 2 can avoid this. Further consideration will occur when Parcel 2 is developed. City may require elevation data to ensure any development is outside of the floodplain.

Per SHMC 17.132.025 a **tree plan** is required. Most trees can probably be saved, but some are proposed to be removal eventually for driveway and utility service to Parcel 2. Some anticipated to be removed are noted on the final plat. Also, some were removed less than a year from the date of this application; the applicable stumps and identified replacements are noted. Per 17.132.025(3):

- (3) Trees removed within the period of one year prior to a development application listed above will be inventoried as part of the tree plan above and will be replaced according to SHMC 17.132.070(4).

Trees within protection zones are already protected per Chapter 17.40 SHMC. Tree replacement shall be required when future development occurs. A protection program defining standards and methods that will be used by the applicant to protect trees during and after construction is a code requirement related to this. The preliminary plat includes some general notes in that regard.

**Utilities** are already underground in this area. This is required.

**(3)** Adequate public facilities are available to serve the proposal (to address transportation facilities in this regard, a traffic impact analysis shall be prepared, as applicable, pursuant to Chapter 17.156 SHMC);

**Finding(s): Water** is available. There is a water main within the Belton Road right-of-way along the west side of the subject property and along the south side of the property. For the purpose of this Partition, whether or not Parcel 2 will have access to the southerly water main is unknown, but it is at least available from the Belton Road right-of-way to Parcel 2 via proposed easements as shown on the preliminary plat.

**Sanitary sewer** is available. When 160 Belton Road was originally built in 1976 it was connected to an on-site septic system with holding tank and drain field. Around the late 1980s with further improvements in the early 1990s a septic tank effluent pump (STEP) system was installed in the area. This is a pressurized sanitary sewer system with limited capacity.

Sometime after the STEP system was installed, the subject property connected; it currently gets billed for both water and sanitary sewer.

The applicant provided an analysis of the STEP system by an Oregon Registered Professional Engineer that notes that the STEP system has 8 connections currently and potential capacity for more (12-20 total or 4-12 more connections). Proposed Parcel 1 is already served and Parcel 2 has the ability to be served as the STEP system can handle an additional connection.

**Storm Water.** Both the Columbia River and Dalton Lake are nearby. Given the parcel sizes and of adjacency of large bodies of water, storm water can be managed if done properly, in a manner courteous to neighbors and in compliance with all regulations.

**Street system/access.** The street system for this neighborhood does not meet current standards and is inadequate for any additional use beyond the existing developed lots and undeveloped lots that depend on the street system. A land division creates new parcels that will result in additional use and development. The Commission finds that because the street system is inadequate and significantly deficient regarding current standards, this partition must be denied. A land partition cannot be approved when public facilities, including streets for access, are inadequate.

The neighborhood that the subject property is amongst has road access from a single source: Belton Road. There is no other inlet or outlet. Within the neighborhood, Belton Road (a public road within a 50-foot-wide public right-of-way) and a segment of Grey Cliffs Drive (a private road within an easement) provides access to 10 detached single-family dwellings. There are more than 10 taxlots in this neighborhood. Not all of these may be a lot, parcel, or otherwise lawfully established unit of land per ORS Chapter 92, but staff estimates approximately 2-4 legal undeveloped lots in the neighborhood. Thus, additional homes are possible as any property owner with a legal property is entitled to *develop* it. However, no property owner is entitled to *divide* property when public facilities, including streets for access, are inadequate.

From Belton Road, the neighborhood begins more-or-less after the driveway to the Elks Lodge at 350 Belton Road. Starting from the Elks Lodge driveway proceeding easterly to the terminus of its right-of-way, Belton Road is approximately 1,300 feet in length. From the same starting point to closest point of the subject property, the length is approximately 1,000 feet and 140 more feet to Grey Cliffs Drive which runs along the southern property line of the subject property. The segment of Grey Cliffs Drive that is accessed by the above-described leg of Belton Road is approximately 500 feet in length before it ends.

Starting at the Elks Lodge driveway proceeding easterly, the approximate first 500 feet of Belton Road is paved at a width of approximately 17 feet. Thereafter the width is around 11 feet in most places along Belton Road and Grey Cliffs Drive. Belton Road is paved and Grey Cliffs Drive is gravel.

Belton Road is classified as a “local street” per the City’s Transportation Systems Plan. A local street requires a minimum 34-foot roadway width and has no maximum to the number dwelling units it can support. Local streets may also be “skinny streets” which allow a 20-foot or 26-foot

roadway width, but are limited to 200 average daily trips (ADT) (i.e., about 20 detached single-family dwellings). Local streets can also be cul-de-sacs (street with no outlet) but are limited to 20 dwelling units with a normal maximum length of 400 feet. The street network for this neighborhood serves less than 20 dwelling units but is substantially less than 20 feet wide over its course and much longer than 400 feet. The overall road width is deficient in width even for the narrowest skinny street standard. Much of the street network is barely more than half of the normal required width. In addition, the total length exceeds the cul-de-sac (no outlet) standard more than twice the normal maximum. Public road standards are not met currently. Any increase in use or development—even just one more detached single-family dwelling, which this partition facilitates—will cause greater noncompliance on an already substandard street system.

The Commission considered exceptions to the normal standards as follows:

Per SHMC 17.152.030(5)(b):

(b) Improvements to streets shall be made according to adopted city standards, unless the approval authority determines that the standards will result in an unacceptable adverse impact on existing development or on the proposed development or on natural features such as wetlands, steep slopes or existing mature trees. In approving an exception to the standards, the approval authority shall determine that the potential adverse impacts exceed the public benefits of the standards. In evaluating the public benefits, the approval authority shall consider the criteria listed in subsection (5)(a) of this section.

Said subsection (5)(a):

(a) The planning director shall recommend, to the decision-making body, desired right-of-way width and pavement width of the various street types within the subdivision or development after consideration of the following:

- (i) The type of road as set forth in Figure 19, Road Standards;
- (ii) Anticipated traffic generation;
- (iii) On-street parking needs;
- (iv) Sidewalk and bikeway requirements;
- (v) Requirements for placement of utilities;
- (vi) Street lighting;
- (vii) Drainage and slope impacts;
- (viii) Street tree location;
- (ix) Planting and landscape areas;
- (x) Safety for motorists, bicyclists, and pedestrians; and
- (xi) Access needs for emergency vehicles;

Per SHMC 17.152.030(3) the approval authority can approve an access easement instead of a public road when “such an easement is the only reasonable method by which a lot, large enough to develop, can be created.” It references Chapter 17.84 SHMC for the standards. This is the provision that allows Parcel 2 to be accessed via an easement over Parcel 1 instead of a more fully developed street in a dedicated right-of-way. The improvement standards differ for private streets/driveways compared to public standards.

The Commission considered the private standards for Belton Road under the circumstances of the neighborhood. In particular, SHMC 17.84.070(4):

(4) Vehicle turnouts (providing a minimum total driveway width of 24 feet for a distance of at least 30 feet) may be required so as to reduce the need for excessive vehicular backing motions in situations where two vehicles traveling in opposite directions meet on driveways in excess of 200 feet in length.

There is an approximate 90-degree angle or corner of Belton Road that is a blind corner that abuts the subject property. This segment of road precedes 7 of the approximate 10 dwellings (plus any new development on parcel 2). This is an optimum location for a vehicle turnout because it maximizes visibility westward where pull-off opportunities are lacking for people leaving the area, increasing the probability that a vehicle by the turnout would see the oncoming vehicle and be able to use the turnout. The Commission discussed this as a means of mitigating the street deficiency under the circumstances along with widening the remaining portion of Belton Road that abuts the subject property to 20 feet, but could not address all the findings necessary for 17.152.030(5)(b) given the degree of minimum standard inadequacy, even by private street standards as described next.

The first private street consideration is existing road width. The predominant 11' pavement width for the street network serving this neighborhood is similar to the city's minimum 10' driveway pavement width requirement, which is used for only 1 or 2 dwelling units/lots. The number of dwellings that currently utilize this exceeds the normal maximum by 500%. The number of total lots and future development of existing legal, undeveloped lots exceeds the maximum even more.

The second private street consideration is the required road width based on uses contemplated by the R10 zoning district. 3 to 6 dwelling units need at least 20 feet of pavement width. 6 units/lots is the maximum allowed for the private street alternative possible by SHMC 17.152.030(3). The current situation exceeds this for current dwellings, future dwellings for existing legal lots, and road width.

The Commission determined it could not accept private road standards within the public right-of-way, even as an alternative to public road standards for Belton Road. Even though the blind corner turn out would be an improvement, the neighborhood still far exceeds private road dwelling unit allowances and pavement width overall. In addition, allowing a private road standard in a public right-of-way is discretionary and not clear and objective for this residential-zoned property.

Based on public standards and private standards, the street network is insufficient for existing development. Additional development is likely in the future for existing undeveloped, legal lots that have a right to be developed. Adding additional lots entitled to development that are accessed by this road exacerbates a situation already contrary to public health, safety and welfare, even for just one more dwelling. This partition cannot be approved under such circumstances.

Paving is required in residential areas per current standards. This would apply to any new road or driveway, or expansions of existing roads/driveways.

**(4)** All proposed lots conform to the size and dimensional requirements of this code; and

**Finding(s):** There are two aspects of this criterion, 1) Sensitive Lands and 2) the provisions of the R10 zoning district.

**Sensitive Lands.** The site abuts the Columbia River (with 75' upland protection zone required per Chapter 17.40 SHMC) and Wetland D-16, otherwise known as Dalton Lake (with 75' upland protection zone required per Chapter 17.40 SHMC). The applicant has conducted an Environmental Assessment to determine the boundaries of these sensitive lands and their respective buffers, which are reflected on the preliminary plat.

The City's local wetland inventory also identified Wetland D-17 on or close to the property, but the Environmental Assessment effort determined D-17 was not close to the property and does not impact this partition.

For subdivisions (creating 4 or more lots), significant wetlands and riparian areas and their protection zones are required to be part of dedicated preservation tracts to be managed by a homeowners association or other responsible entity. Partitions do not create tracts. Thus, the City has allowed easements as a substitute to preserve these areas (e.g., see P.P. No. 2009-17). However, the intent of this is for newly created properties to be "whole" excluding the sensitive lands and protection zones. "Whole" means that the net property not encumbered needs to meet the standards of the Development Code.

Thus, the **R10 zoning district** standards. The minimum lot size of is 10,000 square feet. The net area excluding the wetland, riparian area and protection zones still exceeds this for both parcels. The minimum lot width at the building line is 70' or 80' for a corner lot. Parcel 1 is a corner lot and exceeds this. Parcel 2 gets close to 70' in its net area, but still meets the standard.

The minimum lot width at the street is 60' or 30' along an approved cul-de-sac (i.e., dead-end road). Parcel 1 meets this and Parcel 2 meets the "cul-de-sac standard" given the 30' wide, increasing to 40' wide, access and utility easement off Belton Road.

Minimum lot depth is 100 feet. This is met for both parcels using the net area.

**(5)** All proposed improvements meet city and applicable agency standards.

**Finding(s):** This would be a requirement if approved. Fire Marshall consideration is particularly important given limited access to the area.

\* \* \*

#### **SHMC 17.140.050 – Special provisions for parcels created by through the partition process.**

**(1)** Lot Dimensions. Lot size, width, shape and orientation shall be appropriate for the location of the development and for the type of use contemplated, and:

- (a) No lot shall be dimensioned to contain part of an existing or proposed public right-of-way;
- (b) The depth of all lots shall not exceed two and one-half times the average width, unless the parcel is less than one and one-half times the minimum lot size of the applicable zoning district; and
- (c) Depth and width of properties zoned for commercial and industrial purposes shall be adequate to provide for the off-street parking and service facilities required by the type of use proposed.



**Finding(s):** (a) No existing or proposed right-of-way is impacted. (b) Excluding sensitive land protection buffers, the net area for Parcel 2 has an average width of approximately 90' and a depth of approximately 230'. This meets the depth to width ratio requirement more-or-less. Parcel 1 meets this easily. (c) Not applicable; the property is zoned residential.

**(2) Through Lots.** Through lots shall be avoided except where they are essential to provide separation of residential development from major traffic arterials or to overcome specific disadvantages of topography and orientation, and:

- (a) A planting buffer at least 10 feet wide is required abutting the arterial rights-of-way; and
- (b) All through lots shall provide the required front yard setback on each street.

**Finding(s):** No through lot is proposed.

**(3) Large Lots.** In dividing tracts into large lots or parcels which at some future time are likely to be redivided, the approving authority may require that the lots be of such size and shape, and be so divided into building sites, and contain such site restrictions as will provide for the extension and opening of streets at intervals which will permit a subsequent division of any tract into lots or parcels of smaller size, and:

- (a) The land division shall be denied if the proposed large development lot does not provide for the future division of the lots and future extension of public facilities.

**Finding(s):** Given surrounding wetlands, the Columbia River, floodplain associated with the Columbia River, one narrow road access for this neighborhood, this neighborhood's wildland-urban interface (a transition area between wildland and human development with a higher wildfire risk), and limited sanitary sewer capacity, density promotion is unwise in this area. Redevelopment planning such as "shadow plats" are not warranted for this proposal.

**(4) Fire Protection.** The fire district may require the installation of a fire hydrant where the length of an accessway would have a detrimental effect on firefighting capabilities.

**Finding(s):** There is an existing fire hydrant along Belton Road by the southern edge of the subject property.

The access easement and driveway proposed to serve Parcel 2 will exceed 150 feet. Per SHMC 17.152.030(3)(a), when access easements exceed 150 feet, they shall be improved in accordance with the fire code. When Parcel 2 is developed, its driveway will need to be able to accommodate emergency vehicles. Any requirement of the Fire Marshall shall be met.

**(5) Reciprocal Easements.** Where a common drive is to be provided to serve more than one lot, a reciprocal easement which will ensure access and maintenance rights shall be recorded with the approved partition map.

**Finding(s):** An access easement is proposed to access Parcel 2 from the Belton Road right-of-way through Parcel 1. Maintenance agreement shall be required.

**(6) Accessway.** Any accessway shall comply with the standards set forth in Chapter 17.84 SHMC, Access, Egress, and Circulation.

**Finding(s):** This applies to the access from parcel 1 to parcel 2 only. Broader access considerations (i.e., Belton Road access for the neighborhood) is addressed above.

The access easement proposed to provide street connection to proposed Parcel 2 encompasses the southerly 30' of Parcel 1 (where there are previously recorded access and utility easements for other parties) and the east 40' of Parcel 1.

Parcel 2 is likely to be developed as a detached single-family dwelling. It could also be developed as a duplex beginning July 1, 2021 given Oregon House Bill 2001. The minimum easement for up to two dwellings is 15' width with a minimum 10' pavement width.

In addition, the following requirements apply under SHMC 17.84.070:

(2) Private residential access drives shall be provided and maintained in accordance with the provisions of the Uniform Fire Code.

(3) Access drives in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus in accordance with the engineering standards of SHMC Title 18 and/or as approved by the fire marshal.

(4) Vehicle turnouts (providing a minimum total driveway width of 24 feet for a distance of at least 30 feet) may be required so as to reduce the need for excessive vehicular backing motions in situations where two vehicles traveling in opposite directions meet on driveways in excess of 200 feet in length.

New access to Parcel 2 will be subject to Fire Marshall/Fire Code standards. This includes a turn-around area.

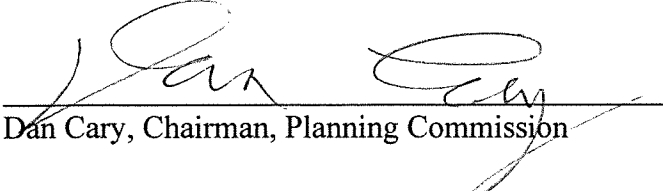
New access to Parcel 2 shall be paved as required by the Development Code. When Parcel 2 is developed, it will need a minimum 10' wide paved driveway from Belton Road to the dwelling or other principal use proposed. This must be within the easement on Parcel 1 for Parcel 2 (cannot be on adjacent property). This is important to consider as the private road along the south side of the subject property, serving other properties, is mostly outside of the subject property where it intersects Belton Road, but angles into the subject property progressing eastward.

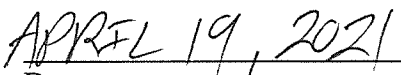
(7) The streets and roads are laid out so as to conform to the plats of subdivisions and maps of partitions already approved for adjoining property as to width, general direction and in all other respects unless the city determines it is in the public interest to modify the street or road pattern.

**Finding(s):** There is no reason to modify the overall road pattern.

### CONCLUSION & DECISION

**Based upon the facts and findings herein, the Planning Commission denies this application.**

  
Dan Cary, Chairman, Planning Commission

  
Date

## MEMORANDUM

**TO:** St. Helens Planning Commission

**FROM:** Damien R. Hall

**DATE:** March 30, 2021

**RE:** Applicant's Final Argument  
Two Acre Residential Partition in R-10 Zone (PT.1.20)

### I. Background

At the hearing and in written testimony, all parties have agreed that the single issue in contention is the adequacy of access via Belton Rd. There is no dispute about the facts, the applicant is proposing a partition to turn a single lot (approximately one acre) into two lots (each approximately one acre). This proposal is consistent with the development standards in the R-10 zone, and the only approval standard that has been called into question is whether Belton Rd. is an adequate public facility to serve the proposed creation of single new lot that will be developed with a single-family home. SHMC 17.140.040(3) ("Adequate public facilities are available to serve the proposal...").

To ensure that Belton Rd. meets the adequacy standard, the applicant proposes the following:

- Improvement of Belton Rd. including at turn-out at the 90-degree turn adjacent to applicant's property;
- A condition of approval limiting site development to one single-family home per lot; and
- A condition of approval requiring applicant to sign a future street improvement per SHMP 17.152.030(1)(d)(iii).

The balance of this memorandum addresses SHMC 17.140.040(3) in additional detail and responds to arguments in the record that do not correspond to approval criteria.

### II. Approval Criteria

The record contains substantial evidence in the record that access via Belton Rd. is adequate to serve the proposed residential subdivision, consistent with 17.140.040(3). Project opponents attempt to reframe the issues and argue that because Belton Rd. does not meet the pavement width standards, it cannot be adequate. That line of argument is misleading because: (1) the street standards do not determine adequacy, and (2) the zoning code provides multiple options for

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approving development with access that does not meet all of the street standards.

First, the adequacy of a street to serve a public development is not the same thing as whether a street meets all standards. By way of context, street standards include width of right-of-way, pavement width, sidewalk and bicycle improvements, street lighting, and street tree standards. To adopt the rule being proposed by project opponents that all street standards must be met in order for development to occur, would preclude development on any number of streets that are technically not compliant but function adequately to provide safe ingress and egress.

Adequacy is determined by the functionality of a street, as noted in 17.140.040(3) ("to address transportation facilities in this regard, a traffic impact analysis shall be prepared, as applicable, pursuant to Chapter 17.156"), not strict compliance with street improvement standards. Here, no TIA is required because the proposed partition will not create 250 daily trips (it will create approximately 10). SHMC 17.156.030(3)(a). However, the record contains substantial evidence that Belton Rd. provides functions adequately and safely, including

- Testimony from four longtime residents of the neighborhood that they cannot recall any accidents on Belton Rd., and testimony from one resident that remembered a single fender bender in the last 30 years.
- Testimony from the applicant that local law enforcement records contain no reported accidents on Belton Rd.
- Testimony from a longtime resident of the neighborhood that he rarely passes cars on Belton Rd. when coming and going from his home (2-3 times per month).
- Testimony from typical vehicle speed on Belton Rd. is low because it is narrow.
- Testimony and evidence that narrow does not equal dangerous, and that narrow streets are safer because it is obvious to drivers that they should not speed.

In contrast, project opponents have simply argued that Belton Rd. is too narrow. There is substantial evidence supporting the adequacy of Belton Rd. to serve the single additional lot and home proposed here.

Second, the code provides multiple standards by which development can proceed despite the access not meeting the street improvement standards. As discussed at the hearing, and detailed below, the SHMC allows:

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- The City to “accept a future improvement guarantee in lieu of street improvements if ... it is unlikely that street improvements would be extended in the foreseeable future and that improvements associate with the project under review does not, by itself, provide significant improvement to street safety or capacity.” SHMC 17.152.030(1)(d)(iii). Here, a half street improvement along the full frontage of the site on Belton would not connect to any other improvements, and cause confusion among motorists and pedestrians, without any safety or capacity benefits. The applicant has proposed a future improvement guarantee.
- Exceptions to roadway width standard allowed when “potential adverse impacts exceed the public benefits of the standards” based on consideration of public benefit, including “anticipated traffic generation... on-street parking needs... drainage and slope impacts.” SHMC 17.152.030(5)(a, b). Here, the proposal will cause de minimis increased traffic, full street improvements are impractical due to topography, sloping grade, established trees, and wetlands, and there are not on-street parking needs. The applicant has proposed that an exception be made to the roadway standards to allow the proposed improvement.
- Partial Street Improvements. Partial street improvements resulting in a pavement width of less than 20 feet, while generally not acceptable, may be approved where essential to reasonable development when in conformity with the other requirements of these regulations, and when it will be practical to require the improvement of the other half when the adjoining property is developed. SHMC 17.15.030(10). The applicant has proposed a partial street improvement including the turn-out.

Project opponents have not addressed any of these standards by which the code allows for development to be approved on streets that do not meet all street improvement standards. All parties do agree that requiring the applicant to improve the entire length of Belton Rd. is not proportional (roughly or otherwise) to the proposed residential partition. The applicant has demonstrated that the proposed street improvement improves the safety and function of Belton Rd. and is willing to make a future improvement guarantee.

### **III. Non-Approval Criteria**

Multiple arguments have been raised that attempt to include hypothetical future development as part of this review. Project opponents request the PC to consider future development of vacant lots that could take access from Belton Rd. This clearly is not within the scope of this partition review, and no attempt has been

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made to link these arguments to approval criteria. Further, project opponents assert that this partition could give rise to many additional dwellings, not just on single-family dwelling. This argument misconstrues the proposed development currently being considered by the PC, which is a two-lot partition to allow an additional single-family home. Nothing else is proposed, applicant has repeatedly expressed the intent to limit development to a single-family home, and willingness to accept a condition of approval consistent with that intent. Finally, project opponents have leveled ad hominem arguments to disparage the applicant. Some of these arguments are responded to in the attached letter from the applicant. All of these arguments are false and unrelated to any approval criteria.

#### **IV. Conclusion**

The applicant respectfully requests that the PC approve the proposed partition. The adequacy of Belton Rd. is demonstrated by substantial evidence in the record, and the proposed street improvements and improvement guarantee will ensure additional safety and capacity now and in the future. No evidence to the contrary has been provided.

## CITY OF ST. HELENS

The record was left open as requested over the last four weeks for a chance to respond after the March 9<sup>th</sup> meeting. Despite this time the facts remain the same, there is **no legal** reason to deny this partition. Our application to partition our property more than satisfies the legal requirements.

The main topic of discussion is Belton road. Belton road is a public road that as stated throughout the meeting and in the weeks that followed is a narrow road. This is obvious to those who know it due to the "mountain of rock" and topographical constraints that exists on both sides of the roadway. However "narrow does not necessarily mean unsafe" this is reiterated several times by both people who support and oppose our partition. In fact it was even stated by one who opposes our partition that Belton roads "physical limitations help ensure that cars drive slowly". It's clear that things could be done in order to improve the safety of Belton road and that is why we have voluntarily accepted the financial responsibility of several turnouts including one on the "blind 90 degree turn". We are asking that these improvements be accepted as conditions when approving this partition as they will in turn benefit our community as a whole. To ask our partition be denied unless we widen the entirety of Belton road is not only unrealistic it's also not legally acceptable for the addition of one single home.

***New evidence redacted.***

***April 5, 2021***

Our partition proposes the addition of **one single family home**, not a "housing development" that several others have eluded to in order to draw negative attention to our intentions. We have no intention on over developing this land and have volunteered to sign away our right to do so. The comments made that this partition will in turn create the development of 4-6 homes is simply not true. **There is not the space nor the desire to do so.**

***New evidence redacted.***

***April 5, 2021***

Lastly I want to address the extremely hurtful and flat out falsehoods that have been said about Andrew and I. Comments were made that we threatened or harassed others in order to get our way. These comments were made by third parties who have manipulated conversations to spin Andrew and I in an ugly light and are far from true. In the short time that Andrew and I have lived in this community we have had many conversations with our neighbors and have formed several friendly relationships. We have not and would never threatened anyone or wish "to make their lives miserable". We realize this partition has personally impacted others including ourselves. It has forced all of us to make tough decisions and as I said before at the meeting and in conversations with others, I respect the decisions we have all had to make whether they support our partition or not. This partition has been an eye opening experience as some have stooped pretty low to hurt others. Despite it all Andrew and I have stayed true to ourselves and will continue to take the high road as we see this through.

## Jacob Graichen

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**From:** Laurie Brownlow <lauriebrownlow@yahoo.com>  
**Sent:** Tuesday, March 16, 2021 3:12 PM  
**To:** Jacob Graichen  
**Subject:** [External] Schlumpberger Belton Road Property Development

To whom it may concern;

We have waited to write this letter until we talked to Kathleen Ward due to the fact she was warned not to submit or talk to anyone at the planning committee by the proposer or they would make her life miserable. We honored her our Aunt's request. No one should feel threatened to speak out against someone, especially at 88 years old.

The people who spoke in favor of the proposed property are all people who live on the upper side of Belton Road and will in no way be affected by the houses being built on the beach or the division of the property. They could be by the road upgrade, but they agreed to this.

We are in not in favor of dividing the property to build a development. When Mr. Schlumpberger spoke he referred to one house and so did his attorney. They said they wanted to build their dream house on the property below, then referred to the new law in June they would just build duplexes if they had to if the partition didn't go through. We understand this is their property and they should be able to build on their property, but also as it stands it does not meet their needs. Mrs. Schlumpberger mentioned one house as well and also said if the partition doesn't go through then they will just wait until June. Then they can build duplexes and do what, won't need any permission to do so. This is the same thing she told Mrs. Ward when she came to her house the few days before the meeting asking her to not speak in the meeting and not go against the proposed partition. With this plan they could possibly build up to 6 houses. This is crazy. The small narrow road could not handle the traffic flow. I know road improvements were included in the proposal.. I would like to know how this will be done? This is a rock wall and the wall will have to be blasted to widen the road. This road will not handle this much excess traffic to these additional homes if they choose to build these. Is the fire marshall who inspected this road someone who was in charge of Mr. Schlumperber? Is this is a conflict of interest? There is always talk about accidents on this road, not once I have I heard anything about medical calls. This is more of a concern to me, due to the fact that most people on this road are retired and possibly this is the kind of calls that would be, not accidents. Still my concern is the road and traffic, width and sewer to all of these newer houses.

We are home owners on the other side of their property and we are concerned about our access to our property. The threats have already been made to both property owners on both side of them already when they didn't get their way and this is a concern of ours.

Please consider a NO on this proposed partition for Schlumpbergers

Thank you,

Charles and Laurie Brownlow  
 34064 Bachelor Flat Road  
 St. Helens, Oregon 97051

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 MAR 16 2021  
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# Reeve Kearns PC

Attorneys at Law

510 American Bank Building  
621 S.W. Morrison Street  
Portland, Oregon 97205  
Voice Mail: 503-225-1127  
Email: dan@reevekearns.com

Daniel H. Kearns  
Direct Dial: 503-997-6032

March 16, 2021

St. Helens Planning Commission  
c/o Russell Hubbard, Chair  
St. Helens City Hall  
265 Strand Street  
St. Helens, OR 97051

**VIA E-MAIL TO**  
**jacobg@ci.st-helens.or.us**

## **Re: Partition PT.1.20 (Schlumpberger)**

Dear Chair Hubbard and Commissioners:

This is submitted as the first post-hearing submission on behalf of Tracey Hill in opposition to the proposed Schlumpberger partition.

The critical deficiency in this proposal is the substandard width of virtually the entire length of Belton Road, which currently serves 10 homes. The City's standard for the width of a local public street is 34 feet, but the City has adopted a 20-foot reduced "skinny street" standard for local public streets in an effort to reduce impervious surface area, calm local traffic and maintain relatively safe, slow vehicle speeds to accommodate bicycles, pets and pedestrians. It is relatively clear that everyone involved in this proceeding, including the applicants, would prefer a 20-foot pavement width as a safer option for all vehicle types and passage along Belton Road, given its current and anticipated future traffic volumes.

The applicants urge you to approve this partition that would add at least one more dwelling and associated traffic (~10 vehicle trips per day) to Belton Road and defer to the indefinite future any improvements other than a relatively short widening at the 90° bend in the road. According to the applicant, the City cannot force them to correct a preexisting width deficiency that pre-dates and is not caused by their application. Ms. Hill agrees that the City's authority to require this applicant to bring Belton Road up to even the lesser skinny streets standard is limited by state and federal law.

Despite that point of agreement, the City is not obligated to approve this partition, which would make a pre-existing, severe deficiency even worse. What these applicants ask of the Planning Commission is "just one more house," but there is no guarantee there will be just one more house on Belton Road, in fact more houses are certain. The current state of development along Belton Road and Gray Cliffs Drive would allow as many as 4 more homes on existing undeveloped lots without any land use approval. The City's Planning Director correctly

Reeve Kearns P.C.

March 16, 2021

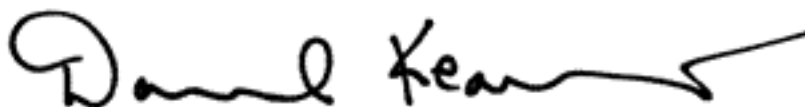
Page 2

characterized a legal lot as being entitled by right to a single-family dwelling that requires only a building permit. There currently are as many as 4 such lots that would contribute additional traffic to Belton Road (~10 vehicle trips per day per dwelling). These lots are currently buildable without land use approval and would be in addition to any new lots you might approve as partitions. Additionally, the lotting map of the area shows that several more lots along Belton Road are over-sized and could be partitioned exactly as the Schlumpbergers request.

In this light, it makes no sense to make a bad situation worse when there is no need to do so and when the situation will almost certainly get worse over time without any action by the City. Approving the Schlumpbergers' partition and creating a home site that doesn't currently exist only hastens the deterioration of the situation. Some day in the distant future, the neighborhood and property owners along Belton Road may form a Local Improvement District (LID) to bring Belton Road up to City street standards. Alternatively, the City may undertake Belton Road's improvement as a public works project. But there is no guarantee and no telling when or if either might happen. For now, and given today's circumstances, Belton Road is severely deficient relative to even the City's skinny streets standard. There are 10 homes that currently use it (~100 vehicle trips per day); approximately 4 new homes could be built by right without land use approval (~40 more vehicle trips per day), and several more lots could be partitioned. On top of that, the City is undertaking implementation of HB 2001 (2019) as we speak, which would allow duplexes or two dwellings by right on every buildable lot in the City's single-family residential zones. That legislative change will have an uncertain but potentially huge impact on trip generation for Belton Road, again without City land use review. In situations such as this, where the deficiency is severe, the Planning Commission has few opportunities to say "enough is enough."

Given the circumstances that stand to increase the vehicle trips on Belton Road without any City intervention, the Planning Commission's only ability to limit the rate of Belton Road's deterioration is to not do anything to make the situation worse, especially when you do not have to. Given the number of new dwellings that could be built by right now or soon, it makes no sense to approve any partitions on Belton Road. Do not accept the applicants' promise of some future LID or City project to widen Belton Road. Just say "no" today to their request to create a new buildable lot that does not exist and does not have to be created, at least not now. The Schlumpbergers will have the chance to build their second dream home later, and possibly somewhere else, just not here and not today. Thank you.

Sincerely,



Daniel Kearns

cc: Client

To: Jacob Graichen and St. Helens Planning Commission

The staff report dated March 1, 2021 on page 4 it states “No property owner is entitled to divide property when streets or access are inadequate.” Belton Road has been the subject of the latest debate. The fact is Belton Road was built and intended for use as a single driveway to a single house only. This is why it doesn't come anywhere close to meeting the city code for a “standard” street. It is sufficiently safe as it is – given the current traffic load. In fact, the physical limitations help ensure that cars must drive slowly and creep around the blind corner.

The real problem will become evident with any additional development (due to a partition) at which point this road will truly become inadequate. It would not be an easy fix due to the lay of the land. It's more involved than a simple turnout or two. It would involve blasting a mountain of rock, potentially damaging nearby homes.

As to the issue of the partition, despite Damien Hall's memo RE: Improvements to Belton Road, repeatedly stating over seven times that no development is being proposed and therefore resulting in a “nonexistent impact” - the intent of a partition is clearly to accommodate development. This partition, if granted, would allow for more development than a single parcel which would result in a huge impact on this neighborhood.

Therefore all this debate over the impact of one additional house on Belton Road must be viewed with the new HB2001 in mind. When even one partition is allowed, the potential for additional houses increases considerably. Denying this partition will not prevent the proposed house to be built but it certainly will alleviate potential woes involving the inability of Belton Road to accommodate any additional traffic.

I therefore urge the Planning Commission to join with the Staff recommendation to deny the partition. Our neighborhood is just not physically conducive to becoming a future housing development.

Respectively yours,

Robin Nunn  
100 Belton Road  
St. Helens, OR

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**Jacob Graichen**

---

**From:** Geoffrey Parker <gparker@parklanddesign.com>  
**Sent:** Tuesday, March 16, 2021 5:10 PM  
**To:** Jacob Graichen  
**Subject:** [External] Jacob - Belton Road Partition

Hi Jacob,

My wife and I own the property at 585 Grey Cliffs Dr in St Helens. We would like to voice our concern for allowing the partition and subsequent development at 160 Belton Road. We do not live full time in the home today but intend to retire there in approximately 8 years when our youngest child graduates from high school. Once we move there we will further add to the daily traffic on Belton Road. Without widening and improving Belton Road a partition that allows more development does not seem a wise choice.

Please feel free to contact me by phone or email. Physical mail should be sent to:

Geoff and Phuong Parker  
PO Box 103  
St Helens, OR 97051

All the best,  
Geoff Parker  
585 Grey Cliffs Dr  
St Helens, OR 97051  
503-260-3687

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Jacob Graichen, City Planner and  
St. Helens City Planning Commission

March 16, 2021

Because the meeting of March 9<sup>th</sup>, 2021 was so lengthy I have reserved my comments re the partition of Schlumpbergers' property to only this short request that the property partition be denied.

I own property on three sides abutting their land---on the east where my house is, on the north along the Columbia River and also on the northwest in the wooded acreage near Dalton Lake.

As requested by Schlumpbergers, some of our neighbors signed letters of support, but those neighbors are not directly adjacent to the proposed partition and are probably mainly affected only by increased road traffic. Since my issues against further development remain as presented on June 11<sup>th</sup>, I did not write a letter of support.

Please, will you take time to revisit my objections as presented at the June 11<sup>th</sup> meeting last year? My complete letter is included in the LUBA files pages 144,145,146 and 147. (Pages 144 and 145 are especially important to me.) Or perhaps you would prefer to reconsider page 153 which is the LUBA summary of my appeal against partition?

One thing I did not mention against partitioning is the effect it could have on my property value. Also to consider, as of July 1, 2021 there will be fewer restrictions against development stipulations and road requirements. The prospect is concerning!

Thank you for your consideration,

Kathleen Ward

Belton Road, Grey Cliff, Gable Road, Clark St and the Middle School they all have one thing in common Basalt Rock. St. Helens is known for it, it has cause more than one dirt contractor to go out business. Talk to any contractor who bids work in any of these areas and they will always have a rock clause in their bid. Which is an open time and material for how ever long it takes to get through the rock. It can more than double an original bid.

Why do I bring this up, well it is why that even though Belton Rd has a 50' wide easement that it does not go down the middle of the street in fact it already is pushed out to one side or the other due to the topography, wet lands, large trees and yes the basalt rock out cropping that is more than prevalent in that area. It is why that area is underdeveloped, and why the streets and private drives are narrow. As the benefit vs the costs not only in preserving the value of the area, but try and have a large excavator hammering on the basalt rock next to a home that is built on the same outcropping for weeks on end. You think the some of the neighbors dislike change in their neighborhood try fielding some of the calls when your trying to get through some of the hard basalt to move a waterline, or sewer line because you find it is not deep enough or in your way.

Yes there is a reason why the streets are narrow in that whole area, does that mean it is unsafe, no it is a fact that narrower streets are safer, as it makes people drive slower especially when faced with other constraints such as large trees, rock croppings, wetlands and cliffs.

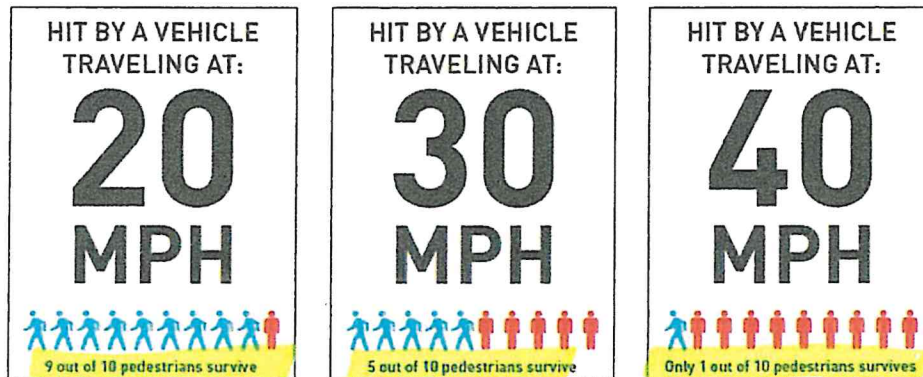
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CITY OF ST. HELENS  
FROM ANDREW  
SCHLUMBERGER



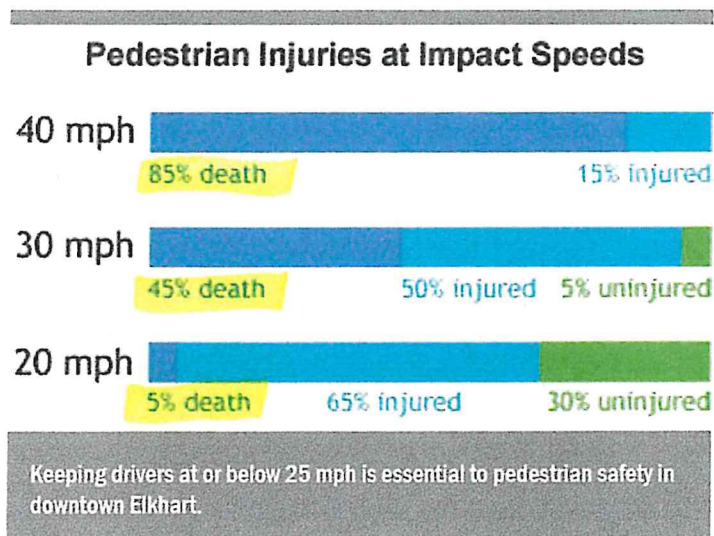
Greenville, South Carolina is a peer city that we are modeling from for Elkhart. The population has grown to be 90,000, from just 50,000 in 1990. Their streets and parks are renowned attractions as a smaller USA city.

The River District is designed to be an urban residential extension of downtown Elkhart. That means that people must feel welcome and safe to live there. It will not be traveled as a truck route and it will not be a highway or state route. It will be traveled at 20 mph - not 40 mph.

A common question we get is "why are narrower lanes necessary in urban, walkable communities?" The simple answer is... safety. While narrow lanes also provide an intimate, quaint and special vibe to the community -- safety is clearly the most measurable reason for narrow lanes. Please see the following charts and article:



Source: Seattle Department of Transportation <https://www.seattle.gov/transportation/projects-and-programs/safety-first/vision-zero/speedlimits> (<https://www.seattle.gov/transportation/projects-and-programs/safety-first/vision-zero/speedlimits>)



Source: Jeff Speck, Narrow Lanes are Safer  
<https://www.citylab.com/design/2014/10/why-12-foot-traffic-lanes-are-disastrous-for-safety-and-must-be-replaced-now/381117/>  
 (https://www.citylab.com/design/2014/10/why-12-foot-traffic-lanes-are-disastrous-for-safety-and-must-be-replaced-now/381117/)



*Excerpt by Jeff Speck*

**A LITTLE BACKGROUND: FIRST, WE ARE TALKING ONLY ABOUT HIGH-VOLUME STREETS HERE.**

Neighborhood streets can have much narrower lanes. The classic American residential street has a 12-foot lane that handles traffic *in two directions*. And many busy streets in my hometown of Washington, D.C., have eight-foot lanes that function wonderfully. These are as safe and efficient as they are illegal in most of the United States, and we New Urbanists have written about them plenty before, and built more than a few. But what concerns us here are downtown streets, suburban arterials and collectors, and those other streets that are expected to handle a good amount of traffic, and are thus subject to the mandate of free flow.

**SECOND, YOU SHOULD KNOW THAT THESE STREETS USED TO BE MADE UP OF 10-FOOT LANES.**

Many of them still exist, especially in older cities, where there is no room for anything larger. The success of these streets has had little impact on the traffic-engineering establishment, which, over the decades, has pushed the standard upward, almost nationwide, first to 11 feet, and then to 12. Now, in almost every place I work, I find that certain streets are held to a 12-foot standard, if not by the city, then by a state or a county department of transportation.

**STATES AND COUNTIES BELIEVE THAT WIDER LANES ARE SAFER. AND IN THIS BELIEF, THEY ARE "DEAD" WRONG.**

In some cases, a state or county controls only a small number of downtown streets. In other cases, they control them all. In a typical city, like Cedar Rapids or Fort Lauderdale, the most important street or streets downtown are owned by the state. In Boise, every single downtown street is owned by the Ada County Highway District, an organization that, if it won't relinquish its streets to the city, should at least feel obliged to change its name. And states and counties almost always apply a 12-foot standard.

Why do they do this? Because they believe that wider lanes are safer. And in this belief, they are dead wrong. Or, to be more accurate, they are wrong, and thousands of Americans are dead.

They are wrong because of a fundamental error that underlies the practice of traffic engineering—and many other disciplines—an outright refusal to acknowledge that human behavior is impacted by its environment. This error applies to traffic planning, as state DOTs widen highways to reduce congestion, in complete ignorance of all the data proving that new lanes will be clogged by the new drivers that they invite. And it applies to safety planning, as traffic engineers, designing for the drunk who's texting at midnight, widen our city streets so that the things that drivers might hit are further away.

The logic is simple enough, and makes reasonable sense when applied to the design of high-speed roads. Think about your behavior when you enter a highway. If you are like me, you take note of the posted speed limit, set your cruise control for 5 m.p.h. above that limit, and you're good to go. We do this because we know that we will encounter a consistent environment free of impediments to high-speed travel. Traffic engineers know that we will behave this way, and that is why they design highways for speeds well above their posted speed limits.

Unfortunately, trained to expect this sort of behavior, highway engineers apply the same logic to the design of city streets, where people behave in an entirely different way.

**ON CITY STREETS, MOST DRIVERS IGNORE POSTED SPEED LIMITS, AND INSTEAD DRIVE THE SPEED AT WHICH THEY FEEL SAFE.**



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### **ON CITY STREETS, MOST DRIVERS IGNORE POSTED SPEED LIMITS, AND INSTEAD DRIVE THE SPEED AT WHICH THEY FEEL SAFE.**

That speed is set by the cues provided by the environment. Are there other cars near me? Is an intersection approaching? Can I see around that corner? Are there trees and buildings near the road? Are there people walking or biking nearby? And: How wide is my lane?

When lanes are built too wide, pedestrians are forced to walk further across streets on which cars are moving too fast and bikes don't fit.

# Reeve Kearns PC

Attorneys at Law

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MAR 8 2021

CITY OF ST. HELENS

March 8, 2021

St. Helens Planning Commission  
c/o Russell Hubbard, Chair  
St. Helens City Hall  
265 Strand Street  
St. Helens, OR 97051

**VIA HAND DELIVERY**

**Re: Partition PT.1.20 (Schlumpberger)**

Dear Chair Hubbard and Commissioners:

I represent Tracey Hill, a neighbor to the applicants who successfully appealed the Schlumpbergers' first partition application. I hereby submit this memo on behalf of Ms. Hill and in opposition to this second, identical partition proposal. My client owns and lives at 250 Belton Road, adjacent to the applicants' property that they again seek to partition.

As a preface to my comments, the current two-lot partition proposal is identical to the Schlumpbergers' first two-lot partition proposal. There is no difference between the two proposals. SHMC 17.24.280(1) requires a 12-month sitting-out period after a denial before the same proposal can be resubmitted by providing as follows.

An application which has been denied or an application which was denied and which on appeal or review has not been reversed by a higher authority, including the Land Use Board of Appeals, the Land Conservation and Development Commission or the courts, may not be resubmitted for the same or a substantially similar proposal or for the same or substantially similar action for a period of at least 12 months from the date the final city action is made denying the application unless there is a substantial change in the facts or a change in city policy which would change the outcome, except as per subsection (2) of this section.

The only fact that has changed in this matter is the elimination of my client's septic drainfield easement. The critically substandard condition of Belton Road has not changed and was the dominant issue in the Planning Commission's prior deliberation about the first application. The substandard condition of Belton Road presents a public traffic safety hazard that cannot be ignored and justifies denial of this application.

The critical deficiency that precludes approval of this partition is the substandard condition of Belton Road. The right-of-way is sufficient at 50 feet, but for most of its length, Belton Road is only 11 feet wide, instead of the 20-foot pavement width required for public local streets by SHMC 17.152.030 and 17.84.070. Photographs in the record show how the surrounding vegetation makes the 11-foot roadway appear extremely narrow and obstructs sight distance. The hazards to pedestrians, pets and bicycles in the roadway, as well as entering vehicles is obvious from these photographs and constitutes an existing safety hazard, not just a dimensional deficiency.

The applicants suggest that a turn-out at the 90° bend in Belton Road would be a satisfactory substitute for compliance with the 20-foot pavement width requirement (mitigation), but that is not legal. Turn-outs are satisfactory for private shared driveways, not for public streets. SHMC 17.152.030 and 17.84.070 require at least 34 feet of pavement width for a normal local street and at least 20 feet of pavement for a public “local skinny street.” The applicants are opposed to even the lesser/compromise width of 20 and instead claim that 11 feet is enough. All the applicants offer is a 30-foot long wide area at the bend in Belton Road as sufficient to protect public safety on this public road. Nothing in the code, however, suggests that a short (30-foot long) turn-out is a safe, suitable or legal substitute for code compliance on a public street.

Staff suggests that a variance to the street standards allowed by SHMC 17.152.030(5)(b) would allow a substandard pavement width and a turn-out. However, the applicant has not applied for any such variance and has not provided any argument or evidence that the variance criteria are met; therefore, you lack the authority to grant one. Even if that were not the case, the approval criteria for street standard variances in 17.152.030(5)(a) would not allow such a significant departure from the required pavement width for a local public street serving 11 or 12 dwellings. In particular, the only alternatives staff can point to suggest that 20 feet of pavement width is the absolute minimum necessary to make this public road safe and somewhat consistent with the City’s requirements.

Citing SHMC 17.152.030(1)(a), the applicants’ lawyer claims that the City’s roadway standards do not even apply because this partition does not constitute a “development,” as the term is defined in SHMC 17.16.010. However, the applicants gloss-over the legal reality that, once a lot is created, the owner can “develop” it with any use allowed outright and no land use process. Thus, construction of one or more houses on the new lot would be allowed by right and would clearly qualify as a “development” under SHMC 17.16.010. It is not clear that the City has the authority to require compliance with street standards as a condition of building permit approval; therefore, the only discretionary permit review that will occur prior to the applicants gaining the right to construct at least two houses, is the current partition. Even under the applicants’ strained legal gymnastics, the Planning Commission could and must impose a condition requiring improvement of Belton Road prior to issuance of a building permit(s) for any new house(s), *i.e.*, development, on the new lot.

Even if you deem a road standards variance as being properly before you, the applicable code section begins with the following mandatory requirement as a starting point:

“Unless otherwise indicated on an approved street plan or adopted corridor plan, or as needed to continue an existing improved street, street right-of-way and roadway widths shall not be less than the minimum width described in Figure 19.”

The only way to vary the prescribed 34-foot minimum pavement width standard for Belton Road is pursuant to the following code provision:

“Improvements to streets shall be made according to adopted city standards, unless the approval authority determines that the standards will result in an unacceptable adverse impact on existing development or on the proposed development or on natural features such as wetlands, steep slopes or existing mature trees. In approving an exception to the standards, the approval authority shall determine that the potential adverse impacts exceed the public benefits of the standards. In evaluating the public benefits, the approval authority shall consider the criteria listed in subsection (5)(a) of this section.”

Consequently, this provision requires a careful balancing against the public benefits of the required standards, which in this case are entirely public safety for bicycles, pedestrians and motor vehicles attempting to pass through and along Belton Road. Belton Road is already severely substandard at only 11 feet wide and serves 10 dwellings. The current application proposes to exacerbate that unsafe condition even more with the addition of one, two or theoretically three new dwellings. The applicants have the burden of proof that all standards are met. In fact, this request does not merit approval under the considerations listed in SHMC 17.152.030(5)(a). In particular, the following considerations strongly militate toward denial of the variance:

- (i) The type of road as set forth in Figure 19, Road Standards
- (ii) Anticipated traffic generation;
- (iv) Sidewalk and bikeway requirements;
- (x) Safety for motorists, bicyclists, and pedestrians; and
- (xi) Access needs for emergency vehicles;

As photographs of Belton Road amply show, and as corroborated by your own site visits, there is no room to pass along this tunnel-like roadway, and the 90° curve severely limits sight distance and visibility of bikes and pedestrians. Granted, the 30-foot turn-out the applicants offer would be better than nothing because at least on-coming cars would not have to back-out the entire length of Belton Road. However, a turn-out does not eliminate the sight distance problem, does not mitigate for the significant and tunnel-like narrowness of the rest of Belton Road; it does not make Belton Road safe for bicycles and pedestrians to pass along its length, nor does it make up for the complete lack of safe facilities for bikes or pedestrians. Ten homes are already served by this road, and the applicants' partition would make that 11 or 12 homes. Under the new "missing middle" housing standards in response to HB 2001, they could also redevelop their existing lot with a duplex, making it 13 dwelling units.

The local Columbia River Fire and Rescue inspector provided a letter, but it does not address Belton Road's width or safety deficiencies or the considerations listed in SHMC 17.152.030(5)(a). All the Fire Inspector says is that "[a]fter reviewing our Fire District's residential driveway standards with you this morning along with visiting your proposed driveway/house site, a fire department access road (driveway) is feasible. Our fire engines and ambulances should have no issues accessing your new home site on an approved driveway access road." All this says is that a driveway on the applicants' property would/could meet the Fire District's driveway standards. That does not mean that Belton Road is safe for emergency vehicles, and remains unsafe for even normal vehicular traffic, bicycles and pedestrians.

The other scare tactic the applicants' lawyer uses is the threat of an unconstitutional Taking claim if the Planning Commission dares to require these applicants to comply with the City's street standards by increasing Belton Road's pavement width to at least 20 feet. First, the so-called *Dolan* "rough proportionality" test requires only that the cost of the improvement be roughly proportional to the impact of the proposed development. No mathematical exactitude is required. The applicants have provided a cost estimate from a lawn and yard maintenance company that it would cost \$183,300 for an unspecified amount of clearing and paving to "Columbia County Private Road standards." Thus, it is not clear what the applicants' estimate is based upon, much less that it is credible evidence of the cost to expand the pavement width of Belton Road to 20 feet. Given that these applicants could construct a duplex on the new parcel and convert their existing house to a duplex, resulting in 4 dwelling units, even a \$183,300 construction cost would be "roughly proportional" to the impact of 4 units (3 new dwellings).

Second, as to the applicants' legal point, however, the fundamental problem with Belton Road's substandard width is that it creates a public and traffic safety hazard if it serves 11 to 13 dwelling units. Nothing in state or federal Takings caselaw requires a local government to approve a substandard public road for yet another dwelling unit (or possibly two or three more) when to do so could cause or exacerbate an existing traffic safety hazard. In other words, even if the City lacks the authority to require these

applicants to widen Belton Road (because the cost of correcting the traffic safety hazard is disproportionate to the impact of the development and thus not a candidate for a condition of approval), the traffic safety hazard still justifies denial. These applicants cannot force the Planning Commission to approve an unsafe situation, and Belton Road serving 11, 12 or more dwellings with only 11 feet of width would be unsafe.

In the final analysis, the applicant has the burden of proof that the public facilities serving this development are safe and adequate. Belton Road simply does not meet the 20-foot width standard; an 11-foot pavement width is too narrow even for the current condition of 10 dwellings, and the applicants' have not demonstrated that "the potential adverse impacts exceed the public benefits of the standards" as required by SHMC 17.152.030(5)(b). The variance request to allow the 11-foot pavement width instead of the required 34 feet or even staff's recommended 20-foot width, must be denied. Staff's first-choice recommendation is relatively unambiguous:

"...staff recommends denial of this application if the Commission determines that access is insufficient to allow a new parcel accessed by a street system already woefully substandard because a new parcel creates new entitlements to development."


If the Planning Commission is inclined to entertain any measure of variance, then a 20-foot pavement width for the entire length of Belton Road is the minimum possible. Otherwise, denial is the City's only option.

Please include the previous LUBA record in its entirety for the Planning Commission.

Please leave open the record of this matter for at least 7 days following your hearing to allow us to respond to anything the applicants might submit.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Kearns", with a long horizontal flourish extending to the right.

Daniel Kearns

Enclosures  
cc: Client









160 Belton Rd.

**CITY OF ST. HELENS PLANNING DEPARTMENT**  
**STAFF REPORT**  
 Partition, PT.1.21

**DATE:** March 1, 2021  
**TO:** Planning Commission  
**FROM:** Jacob A. Graichen, AICP, City Planner

**APPLICANT:** Andrew and Lindsay Schlumpberger  
**OWNER:** same as applicant

**ZONING:** Suburban Residential, R10  
**LOCATION:** 160 Belton Road; 5N1W-34BC-1100 and 5N1W-34-201  
**PROPOSAL:** 2-parcel Partition

**SITE INFORMATION / BACKGROUND**

The subject property is located along the Columbia River, Dalton Lake and Belton Road. Belton Road provides access. It is developed with a detached single-family dwelling that, per the County Assessor data, was built in 1976. The subject property did not abut the Columbia River until 2004 when a Lot Line Adjustment was done that resulted in today's lot configuration, now proposed to be divided into two.

This is a reapplication of Partition PT.1.20, which was amended administratively, then denied by the Planning Commission on appeal AP.1.20, and then appealed to the Oregon Land Use Board of Appeals LUBA No. 2020-075. The Commission denied the matter based on an on-site sewerage system drainfield easement recorded in 1976 as Book 208, Page 404 Columbia County Clerk's records. After the LUBA appeal was filed that easement was eventually extinguished (Instrument No. 2020-12301) and the LUBA appeal was dismissed. The applicant has now reapplied for the same 2-parcel Partition.

Pursuant to St. Helens Municipal Code 17.24.280(1) a waiting period of at least 12 months is required before resubmittal of the same application which was originally denied at the local level. The notice of the Planning Commission's denial of the matter (AP.1.20) was issued on July 7, 2020. However, one exception to this 12-month resubmission limitation is if there has been a substantial change in the facts. The city determined that removal of the "drainfield easement" is a justifiable change in facts to allow reapplication within the one-year time period.

Partitions are normally administrative decisions. Pursuant to SHMC 17.24.090(2), the Planning Director may refer any application for review to the Planning Commission. Staff chose to refer this to the Commission due to their involvement in the appeal of the original application and because public hearings are better platform for public testimony which was well represented in the original application and its appeal.

**PUBLIC HEARING & NOTICE**



**Public hearing** before the Planning Commission: March 9, 2021

**Notice** of this proposal was sent to surrounding property owners within 200 feet of the subject property on February 17, 2021 via first class mail. Notice was sent to agencies by mail or e-mail on the same date.

**Notice** was published on February 24, 2021 in The Chronicle newspaper.

#### **APPLICATION COMPLETENESS**

This application was originally received on January 5, 2021. Staff identified missing information or other aspects that rendered the application incomplete and notified the applicant of the issue pursuant to SHMC 17.24.050 on January 20, 2021. The applicant provided revised or new information and the application was deemed complete on January 27, 2021.

The 120-day rule (ORS 227.178) for final action for this land use decision is May 27, 2021.

#### **APPLICABLE CRITERIA, ANALYSIS & FINDINGS**

##### **SHMC 17.140.040 – Partition approval criteria.**

A request to partition land shall meet all of the following criteria (1-5):

**(1)** The proposal conforms with the city's comprehensive plan;

**Finding(s):** There is no known conflict with the specific Comprehensive Plan policies identified in Chapter 19.12 SHMC.

There is no known conflict with the addendums to the Comprehensive Plan which includes Economic Opportunities Analysis (Ord. No. 3101), Waterfront Prioritization Plan (Ord. No. 3148), the Transportation Systems Plan (Ord. No. 3150), the Corridor Master Plan (Ord. No. 3181), the Parks & Trails Master Plan (Ord. No. 3191), the Riverfront Connector Plan (Ord. No. 3241), and the Housing Needs Analysis (Ord. No. 3244).

**(2)** The proposed partition complies with all statutory and ordinance requirements and regulations;

**Finding(s):** New property lines do not create any new substandard compliance with the **R10 zone standards**, except as described herein.

There is **area of special flood hazard** (i.e., 100 year flood) associated with the Columbia River. Pursuant to SHMC 17.46.050(1)(g)(ii) this Partition must:

- (A) Be consistent with the need to minimize flood damage.
- (B) Have public utilities and facilities such as sewer, gas, electrical, and water systems, located and constructed to minimize or eliminate flood damage;
- (C) Have adequate drainage provided to reduce exposure to flood hazards.

Based on the Flood Insurance Rate Maps (FIRMS), there appears to be adequate area outside of the floodplain to meet these requirements. It is possible that any development of Parcel 2 can avoid this. Further consideration will occur when Parcel 2 is developed. City may require elevation data to ensure any development is outside of the floodplain.

Per SHMC 17.132.025 a **tree plan** is required. Most trees can probably be saved, but some are proposed to be removed eventually for driveway and utility service to Parcel 2. Some anticipated to be removed are noted on the final plat. Also, some were removed less than a year from the date of this application; the applicable stumps and identified replacements are noted. Per 17.132.025(3):

(3) Trees removed within the period of one year prior to a development application listed above will be inventoried as part of the tree plan above and will be replaced according to SHMC 17.132.070(4).

Trees within protection zones are already protected per Chapter 17.40 SHMC. Tree replacement shall be required when future development occurs. A protection program defining standards and methods that will be used by the applicant to protect trees during and after construction is a code requirement related to this. The preliminary plat includes some general notes in that regard.

**Utilities** are already underground in this area. This is required.

**(3)** Adequate public facilities are available to serve the proposal (to address transportation facilities in this regard, a traffic impact analysis shall be prepared, as applicable, pursuant to Chapter 17.156 SHMC);

**Finding(s): Water** is available. There is a water main within the Belton Road right-of-way along the west side of the subject property and along the south side of the property. For the purpose of this Partition, whether or not Parcel 2 will have access to the southerly water main is unknown, but it is at least available from the Belton Road right-of-way to Parcel 2 via proposed easements as shown on the preliminary plat.

**Sanitary sewer** is available. When 160 Belton Road was originally built in 1976 it was connected to an on-site septic system with holding tank and drain field. Around the late 1980s with further improvements in the early 1990s a septic tank effluent pump (STEP) system was installed in the area. This is a pressurized sanitary sewer system with limited capacity.

Sometime after the STEP system was installed, the subject property connected; it currently gets billed for both water and sanitary sewer.

The applicant provided an analysis of the STEP system by an Oregon Registered Professional Engineer that notes that the STEP system has 8 connections currently and potential capacity for more (12-20 total or 4-12 more connections). Proposed Parcel 1 is already served and Parcel 2 has the ability to be served as the STEP system can handle an additional connection.

**Storm Water.** Both the Columbia River and Dalton Lake are nearby. Given the parcel sizes and of adjacency of large bodies of water, storm water can be managed if done properly, in a manner courteous to neighbors and in compliance with all regulations.

**Street system/access.** The street system for this area does not meet the current standards today. Any property owner with a legal property is entitled to *develop* it. However, no property owner is entitled to *divide* property when public facilities, including streets for access, are inadequate. A key question for the Commission is if this Partition can be allowed despite the access shortcomings.

#### Current conditions

There are currently about ten homes accessed by a single narrow road (Belton Road / Grey Cliffs Drive) with no outlet, starting from the driveway to the Elks Lodge at 350 Belton Road and proceeding easterly to road terminus. The first approximate 500 feet of this section of road is paved at a width of approximately 17 feet, thereafter the width is around 11' in most places. This doesn't meet any current standard for a public or private street that accesses 10+ dwellings.

#### Public Road standards

Public road standards are generally addressed in Chapter 17.152 SHMC. There are several classifications with Belton Road classified as a "local street" per the City's Transportation Systems Plan. As applicable to the analysis of this Partition:

- Local street, normal: 34' roadway width. No max dwelling unit limit.
- Local "skinny" street: 20' or 26' roadway width. Limited to 200 average daily trips (ADT) (i.e., about 20 detached single-family dwellings).
- Cul-de-sac (essential a local street that terminates at one end): limited to 20 dwelling units; Normal max length is 400'.

Belton road (with Grey Cliffs Drive), starting from just after the Elks Lodge driveway at 350 Belton Road, currently serves about 10 detached single-family dwellings, is much longer than 400' (at > 1,000 linear feet), and is predominately less than 20' wide over its course as described above.

No physical public road standard is met.

However, the 50' wide right-of-way width meets the minimum standard for a normal (as opposed to "skinny") local classified street.

#### Exception to standards

Per SHMC 17.152.030(5)(b):

(b) Improvements to streets shall be made according to adopted city standards, *unless the approval authority determines that the standards will result in an unacceptable adverse impact on existing development or on the proposed development or on natural features such as wetlands, steep slopes or existing mature trees*. In approving an exception to the standards, the approval authority shall determine that the potential adverse impacts exceed the public benefits of the standards. In

evaluating the public benefits, the approval authority shall consider the criteria listed in subsection (5)(a) of this section.

Said subsection (5)(a):

(a) The planning director shall recommend, to the decision-making body, desired right-of-way width and pavement width of the various street types within the subdivision or development after consideration of the following:

- (i) The type of road as set forth in Figure 19, Road Standards;
- (ii) Anticipated traffic generation;
- (iii) On-street parking needs;
- (iv) Sidewalk and bikeway requirements;
- (v) Requirements for placement of utilities;
- (vi) Street lighting;
- (vii) Drainage and slope impacts;
- (viii) Street tree location;
- (ix) Planting and landscape areas;
- (x) Safety for motorists, bicyclists, and pedestrians; and
- (xi) Access needs for emergency vehicles;

So alternate designs to public road standards can be considered, given findings based on the above. **So what alternative design is there?**

Use of “access easement” alternative for an actual street?

Per SHMC 17.152.030(3) the approval authority can approve an access easement instead of a public road when “such an easement is the only reasonable method by which a lot, large enough to develop, can be created.” It references Chapter 17.84 SHMC for the standards.

This is the standard that allows Parcel 2 to be accessed via an easement over Parcel 1 instead of a more fully developed street in a dedicated right-of-way.

**The Commission could also consider the “access easement” alternative improvements for Belon Road itself but is not bound to allow this.** The “access easement” road width standards based on uses contemplated by the R10 zoning are: 3 to 6 dwelling units need at least 20 feet. 6 units/lots is the normal maximum allowed for the “access easement” alternative.

The current situation exceeds this as it has about 10 dwellings (4 above the 6 maximum) on a road predominately less than 20’ wide over its course.

**But the Commission could consider SHMC 17.84.070(4), below, as the alternative public street standard under the circumstances if it can address all the findings necessary for 17.152.030(5)(b) above:**

(4) Vehicle turnouts (providing a minimum total driveway width of 24 feet for a distance of at least 30 feet) may be required so as to reduce the need for excessive vehicular backing motions in situations where two vehicles traveling in opposite directions meet on driveways in excess of 200 feet in length.

There is an approximate 90-degree angle of the Belton Road right-of-way that is a blind corner that abuts the subject property. This segment of road precedes 7 of the approximate 10 dwellings (plus any new development on parcel 2). This is an optimum location for a vehicle turnout because it maximizes visibility westward where pull off opportunities are lacking for people leaving the area increasing the probability that a vehicle by the turn out would see the oncoming vehicle and be able to use the turnout.

### Paving

The street is paved where it lies within public right-of-way, but turns to gravel when it leaves the right-of-way along the south side of the subject property. Paving is required in residential areas per current standards. This would apply to any new road or driveway, or expansions of existing roads/driveways.

**(4)** All proposed lots conform to the size and dimensional requirements of this code; and

**Finding(s):** There are two aspects of this criterion, 1) Sensitive Lands and 2) the provisions of the R10 zoning district.

**Sensitive Lands.** The site abuts the Columbia River (with 75' upland protection zone required per Chapter 17.40 SHMC) and Wetland D-16, otherwise known as Dalton Lake (with 75' upland protection zone required per Chapter 17.40 SHMC). The applicant has conducted an Environmental Assessment to determine the boundaries of these sensitive lands and their respective buffers, which are reflected on the preliminary plat.

The City's local wetland inventory also identified Wetland D-17 on or close to the property, but the Environmental Assessment effort determined D-17 was not close to the property and does not impact this partition.

For subdivisions (creating 4 or more lots), significant wetlands and riparian areas and their protection zones are required to be part of dedicated preservation tracts to be managed by a homeowners association or other responsible entity. Partitions do not create tracts. Thus, the City has allowed easements as a substitute to preserve these areas (e.g., see P.P. No. 2009-17). However, the intent of this is for newly created properties to be "whole" excluding the sensitive lands and protection zones. "Whole" means that the net property not encumbered needs to meet the standards of the Development Code.

Thus, the **R10 zoning district** standards. The minimum lot size of is 10,000 square feet. The net area excluding the wetland, riparian area and protection zones still exceeds this for both parcels. The minimum lot width at the building line is 70' or 80' for a corner lot. Parcel 1 is a corner lot and exceeds this. Parcel 2 gets close to 70' in its net area, but still meets the standard.

The minimum lot width at the street is 60' or 30' along an approved cul-de-sac (i.e., dead-end road). Parcel 1 meets this and Parcel 2 meets the "cul-de-sac standard" given the 30' wide, increasing to 40' wide, access and utility easement off Belton Road.



Minimum lot depth is 100 feet. This is met for both parcels using the net area.

**(5)** All proposed improvements meet city and applicable agency standards.

**Finding(s):** This would be a requirement if approved. Fire Marshall consideration is particularly important given limited access to the area.

\* \* \*

### **SHMC 17.140.050 – Special provisions for parcels created by through the partition process.**

**(1)** Lot Dimensions. Lot size, width, shape and orientation shall be appropriate for the location of the development and for the type of use contemplated, and:

- (a) No lot shall be dimensioned to contain part of an existing or proposed public right-of-way;
- (b) The depth of all lots shall not exceed two and one-half times the average width, unless the parcel is less than one and one-half times the minimum lot size of the applicable zoning district; and
- (c) Depth and width of properties zoned for commercial and industrial purposes shall be adequate to provide for the off-street parking and service facilities required by the type of use proposed.

**Finding(s):** (a) No existing or proposed right-of-way is impacted. (b) Excluding sensitive land protection buffers, the net area for Parcel 2 has an average width of approximately 90' and a depth of approximately 230'. This meets the depth to width ratio requirement more-or-less. Parcel 1 meets this easily. (c) Not applicable; the property is zoned residential.

**(2)** Through Lots. Through lots shall be avoided except where they are essential to provide separation of residential development from major traffic arterials or to overcome specific disadvantages of topography and orientation, and:

- (a) A planting buffer at least 10 feet wide is required abutting the arterial rights-of-way; and
- (b) All through lots shall provide the required front yard setback on each street.

**Finding(s):** No through lot is proposed.

**(3)** Large Lots. In dividing tracts into large lots or parcels which at some future time are likely to be redivided, the approving authority may require that the lots be of such size and shape, and be so divided into building sites, and contain such site restrictions as will provide for the extension and opening of streets at intervals which will permit a subsequent division of any tract into lots or parcels of smaller size, and:

- (a) The land division shall be denied if the proposed large development lot does not provide for the future division of the lots and future extension of public facilities.

**Finding(s):** Given surrounding wetlands, the Columbia River, floodplain associated with the Columbia River, one narrow road access for this neighborhood, this neighborhood's wildland-urban interface (a transition area between wildland and human development with a higher wildfire risk), and limited sanitary sewer capacity, density promotion is unwise in this area. Redevelopment planning such as "shadow plats" are not warranted for this proposal.

**(4)** Fire Protection. The fire district may require the installation of a fire hydrant where the length of an accessway would have a detrimental effect on firefighting capabilities.

**Finding(s):** There is an existing fire hydrant along Belton Road by the southern edge of the subject property.

The access easement and driveway proposed to serve Parcel 2 will exceed 150 feet. Per SHMC 17.152.030(3)(a), when access easements exceed 150 feet, they shall be improved in accordance with the fire code. When Parcel 2 is developed, its driveway will need to be able to accommodate emergency vehicles. Any requirement of the Fire Marshall shall be met.

**(5) Reciprocal Easements.** Where a common drive is to be provided to serve more than one lot, a reciprocal easement which will ensure access and maintenance rights shall be recorded with the approved partition map.

**Finding(s):** An access easement is proposed to access Parcel 2 from the Belton Road right-of-way through Parcel 1. Maintenance agreement shall be required.

**(6) Accessway.** Any accessway shall comply with the standards set forth in Chapter 17.84 SHMC, Access, Egress, and Circulation.

**Finding(s): This applies to the access from parcel 1 to parcel 2 only. Broader access considerations (i.e., Belton Road access for the neighborhood) is addressed above.**

The access easement proposed to provide street connection to proposed Parcel 2 encompasses the southerly 30' of Parcel 1 (where there are previously recorded access and utility easements for other parties) and the west 40' of Parcel 1.

Parcel 2 is likely to be developed as a detached single-family dwelling. It could also be developed as a duplex beginning July 1, 2021 given Oregon House Bill 2001. The minimum easement for up to two dwellings is 15' width with a minimum 10' pavement width.

In addition, the following requirements apply under SHMC 17.84.070:

(2) Private residential access drives shall be provided and maintained in accordance with the provisions of the Uniform Fire Code.

(3) Access drives in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus in accordance with the engineering standards of SHMC Title 18 and/or as approved by the fire marshal.

(4) Vehicle turnouts (providing a minimum total driveway width of 24 feet for a distance of at least 30 feet) may be required so as to reduce the need for excessive vehicular backing motions in situations where two vehicles traveling in opposite directions meet on driveways in excess of 200 feet in length.

New access to Parcel 2 will be subject to Fire Marshall/Fire Code standards. This includes a turn-around area.

New access to Parcel 2 shall be paved as required by the Development Code. When Parcel 2 is developed, it will need a minimum 10' wide paved driveway from Belton Road to the dwelling or other principal use proposed. This must be within the easement on Parcel 1 for Parcel 2 (cannot be on adjacent property). This is important to consider as the private road along the south side of the subject property, serving other properties, is mostly outside of the subject property where it intersects Belton Road, but angles into the subject property progressing eastward.

**(7)** The streets and roads are laid out so as to conform to the plats of subdivisions and maps of partitions already approved for adjoining property as to width, general direction and in all other respects unless the city determines it is in the public interest to modify the street or road pattern.

**Finding(s):** There is no reason to modify the overall road pattern.

### CONCLUSION & RECOMMENDATION

**Based upon the facts and findings herein, staff recommends denial of this application if the Commission determines that access is insufficient to allow a new parcel accessed by a street system already woefully substandard because a new parcel creates new entitlements to development.**

~or~

*This assumes the Commission is able to find in favor of the exception to the street standards to be met with the private street vehicle turn out.*

**Based on the facts and findings herein, if the Planning Commission approves this Parttition, staff recommends the following conditions:**

1. **This Land Partition preliminary plat approval shall be effective for a period of twelve (12) months from the date of approval.** The approval shall become void if a final plat prepared by a professional registered surveyor in accordance with 1) the approved preliminary plat, 2) the conditions herein, and 3) the form and content requirements of the City of St. Helens Development Code (SHMC Title 17) and Oregon Revised Statutes is not submitted within the twelve (12) month approval period. **Note: a time extension of up to six months is possible per SHMC 17.140.035(3).**
2. **The following shall be required before the City accepts a final plat for review:**
  - a. Construction plans for a vehicle turnout (providing a minimum total driveway width of 24 feet for a distance of at least 30 feet) along Belton Road (and within the right-of-way) along the subject property shall be provided for city review and approval. The City may require no-parking identification.  
  
Location of turnout shall remedy the blind corner to the maximum extent possible where the public right-of-way has an approximate 90-degree angle along the west side of the subject property.
3. **The following shall be required before the City signs an approved final plat:**
  - a. The vehicle turnout per plans per condition 2.a shall be completed and approved by the City.
  - b. Applicant shall provide a maintenance agreement, subject to city review and approval, that will be recorded with the final plat per condition 5.



4. **In addition to compliance with local, county, state and other requirements, the following shall be included on the final plat:**
  - a. Conservation easements to the City for wetlands and related upland protection zone, and riparian areas and related upland protection zones. For conservation easements, there shall be a narrative that states: “this area subject to the restrictions and protections of the City of St. Helens” or an alternative as approved by the City.
  - b. A note shall be included on the plat for the maintenance agreement for shared access (see condition 3.b and 5.a) with a line to write the instrument number on the plat upon the agreement’s recordation.
5. **The following shall be recorded with the final plat:**
  - a. Maintenance agreement shall be required for the shared access (within easement) on Parcel 1 for the benefit of Parcel 2.
6. **The following shall be required prior to any development or building permit issuance for Parcel 2 of this partition with implementation required prior to final inspection/ approval of the contemplated development:**
  - a. Fire Marshall approval of driveway design shall be required and included in the plans for applicable building/development permits.
  - b. Plans as part of the building/development permits shall show minimum 10’ paved driveway width (or additional requirements per the Fire Marshall) from Belton Road to the dwelling or other principal use proposed. This must be within the easement(s) on Parcel 1 benefitting Parcel 2.
7. Any requirement of the Fire Marshall as it applies to this Land Partition shall be met.
8. All utilities shall be underground pursuant to SHMC 17.152.120.
9. Tree replacement shall be required when future development occurs, as applicable per Chapter 17.132 SHMC. Development shall follow the approved protection program defining standards and methods that will be used by the applicant/owner to protect trees during and after construction.  
  
Specific location of replacement trees subject to city inspection and approval prior to any plan approval. Inspection of replacement tree plantings subject to city inspection prior to final approval.
10. This partition does not allow impacts to sensitives lands (such as floodplains, wetlands and their upland protection zones, and riparian areas and their upland protection zones). Additional permitting may be required for such impacts.

11. This partition is allowed on a street system already substandard for existing development given improvements as described herein to incrementally improve the system. This does not guarantee future land divisions for this or other property dependent on this substandard system.
12. Owner/applicant is still responsible to comply with the City Development Code (SHMC Title 17).

**Attachment(s):**

- Original application materials – January 27, 2020 (when application deemed complete):
  - Preliminary plat dated January 25, 2001
  - Belton Road S.T.E.P. system analysis memo dated December 13, 2019
  - Environmental Assessment (wetland/waters delineation) dated January 30, 2020
  - Instrument No. 2020-12301, easement extinguishment and relinquishment
  - Letter from CRFR Fire Inspector dated November 30, 2020
  - Letter from Scappoose Fire District dated May 29, 2020
  - Estimate from Triton Lawn and Yard Maintenance dated May 27, 2020
  - Letter from Jerry and Lynn Belcher (undated)
  - Letter from Larry Hough dated June 7, 2020
  - Letter from Michelle and Alexander Damis dated January 11, 2021
- Memo from Damien Hall dated/received February 5, 2021
- Letter from Jerry Belcher dated February 24, 2021
- Letter from Larry Hough dated February 24, 2021
- Appeal AP.1.20 attachment (*created by city staff*)
- Private drive/access easement exhibit (*created by city staff*)

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Notes:

Property Owners:  
Andrew and Lindsay  
Schlumpberger  
160 Belton Road  
St. Helens, OR 97051

Tax Map Parcel No.:  
5134-000-00201  
5134-BC-01100

Zoning: R10

Wetland Delineation by  
Wetland Solutions Northwest, LLC

Sensitive Lands Buffers were  
measured along the slope

Parcel 2

46060 SQ.FT.  
22565 SQ.FT. OUTSIDE  
OF SENSITIVE LANDS

Parcel 1

45900 SQ.FT.  
43010 SQ.FT. OUTSIDE  
OF SENSITIVE LANDS

WESTERLY SENSITIVE LANDS  
BUFFER

Dalton Lake  
EDGE OF WATER

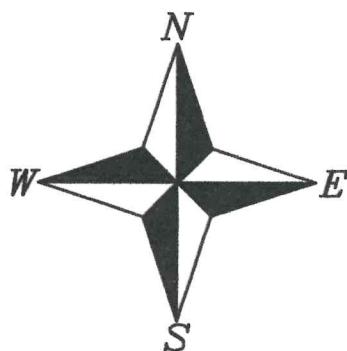
PROPOSED  
VEHICLE TURNOUT  
24'X30'

Belton  
Road

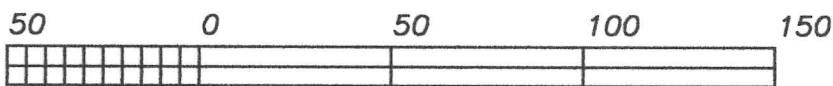
EXISTING  
PAVEMENT

EXISTING GRAVEL DRIVEWAY

Columbia River



Scale: 1"=50'  
CF:19054S  
SF:19054S1



GRAPHIC SCALE - FEET

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JULY 26, 1985  
DAVID E. REYNOLDS  
2157

RENEWAL DATE: 12-31-2022

Reynolds  
Land Surveying, Inc.  
32990 Stone Road  
Warren, Oregon 97053  
(503) 397-5516

Tree Plan & Road Improvement Plan  
For  
Andrew & Lindsay Schlumpberger  
Situated In The N.W. 1/4  
Section 34, T.5N., R.1W., W.M.  
City of St. Helens  
Columbia County, Oregon  
January 25, 2021

Tree Plan

⊙ Denotes tree with species and size  
as noted.

Trees to be removed are as noted  
and will be replaced with same  
species in Westerly Sensitive Lands  
Buffer.

Existing stumps are as noted and  
will be replaced with same species  
in the Westerly Sensitive Lands  
Buffer.

Existing trees within 20' of any  
construction areas will be  
protected with 4' construction  
zone safety fencing.





**Schlumpberger Consulting Engineers, Inc.**  
Structural/Civil/Environmental/Construction Mgt.

Main Office: Mount Shasta  
624 S. Mt. Shasta Blvd., Mt. Shasta, CA 96067  
Tel: 530-926-2605  
Oregon: 17744 #A11 Hwy 101 N. Brookings, OR 97415  
Mobile: 530-859-1277  
Email: cps@scseshasta.com

**SUBJECT: Additional Connections to the Belton Road S.T.E.P. System  
In St. Helens, Oregon**

**CLIENT: Andrew Schlumpberger**  
**LOCATION: 160 Belton Road**  
**St. Helens, Oregon**

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**JAN 27 2021**

**CITY OF ST. HELENS**

**DATE: December 13, 2019**

**Engineering Report:**

1. The existing STEP wastewater system for the Belton Road and Graycliff Drive in St. Helens, Oregon as shown on the as-built plan dated August 1989 by Smits and Associates, with updates in 1990 and 1992, is a pressure system for the community of Forest Park Road.
2. The Step system requires a pump at each lot that is hooking up to the system.
3. The transport pipe is in City ROW and is maintained as part of the City wastewater collection system.
4. The transport pipe is 2 inch schedule 40 PVC pressure pipe. The transport pipe can take a maximum flow of 127 gallons per minute (gpm) at minimal internal pressure of 20-100 psi.
5. The total length of the transport pipe is less than 1500 feet. Connections are at multiple points along this transport pipe and available to all lots along Belton and Graycliff roads that can connect to the transport pipe.

In reviewing the as-built plans it appears that the existing transport pipe, with 8 current connections, is capable of a number of future connections without significant problems to City STEP System or existing owners since each new owner would have a tank, pump and lateral for which they are responsible for. There are less than ten connections to the pressure line at this time and the two inch line has capacity for more than ten connections at peak capacity where everyone is pumping at the same time. High Head pumps are needed for the static and dynamic TDH losses. Pumps should be efficient between 10 and 30 gpm. Even if all pumps are on at once there is capacity for a minimum of 12 connections or maximum of 20. Pumps should be effluent pumps rather than grinder pumps and TDH capacity of 150 feet and discharge rate of 20 gpm. Therefore there should be no issues with an additional connection to the Belton Road S.T.E.P. System with an approved tank and pump.

Charles Schlumpberger PE  
C15654



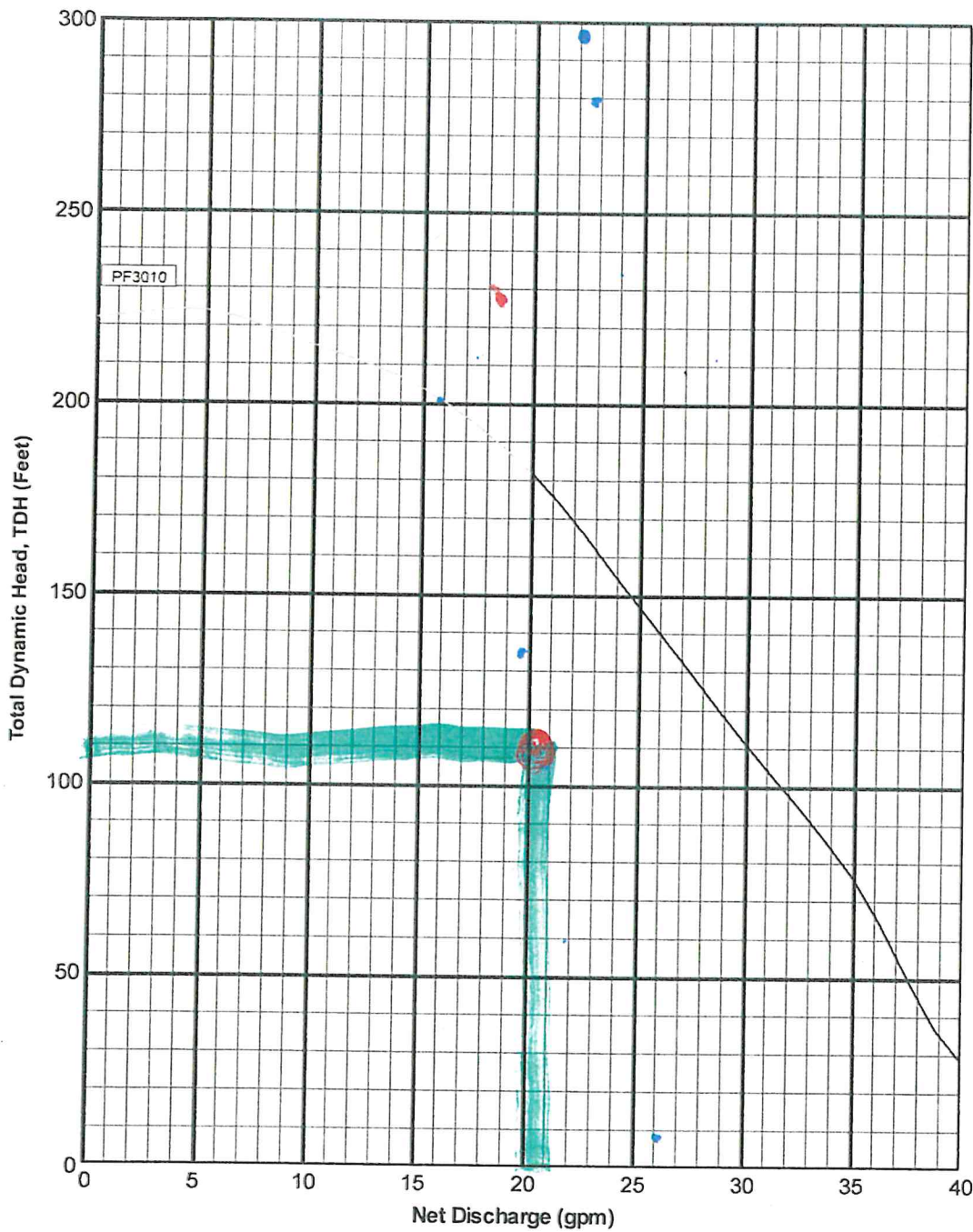
# Pump Curve for PF3010

Item 1.



**Oreco Systems®**  
Incorporated

*Changing the Way the  
World Does Wastewater®*



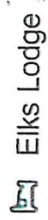
Recommended Pump for S.T.E.P.  
Oreco PF3010 High Head



# Belton Road S.T.E.P. System

Belton Road and Graycliff Drive.

## Legend



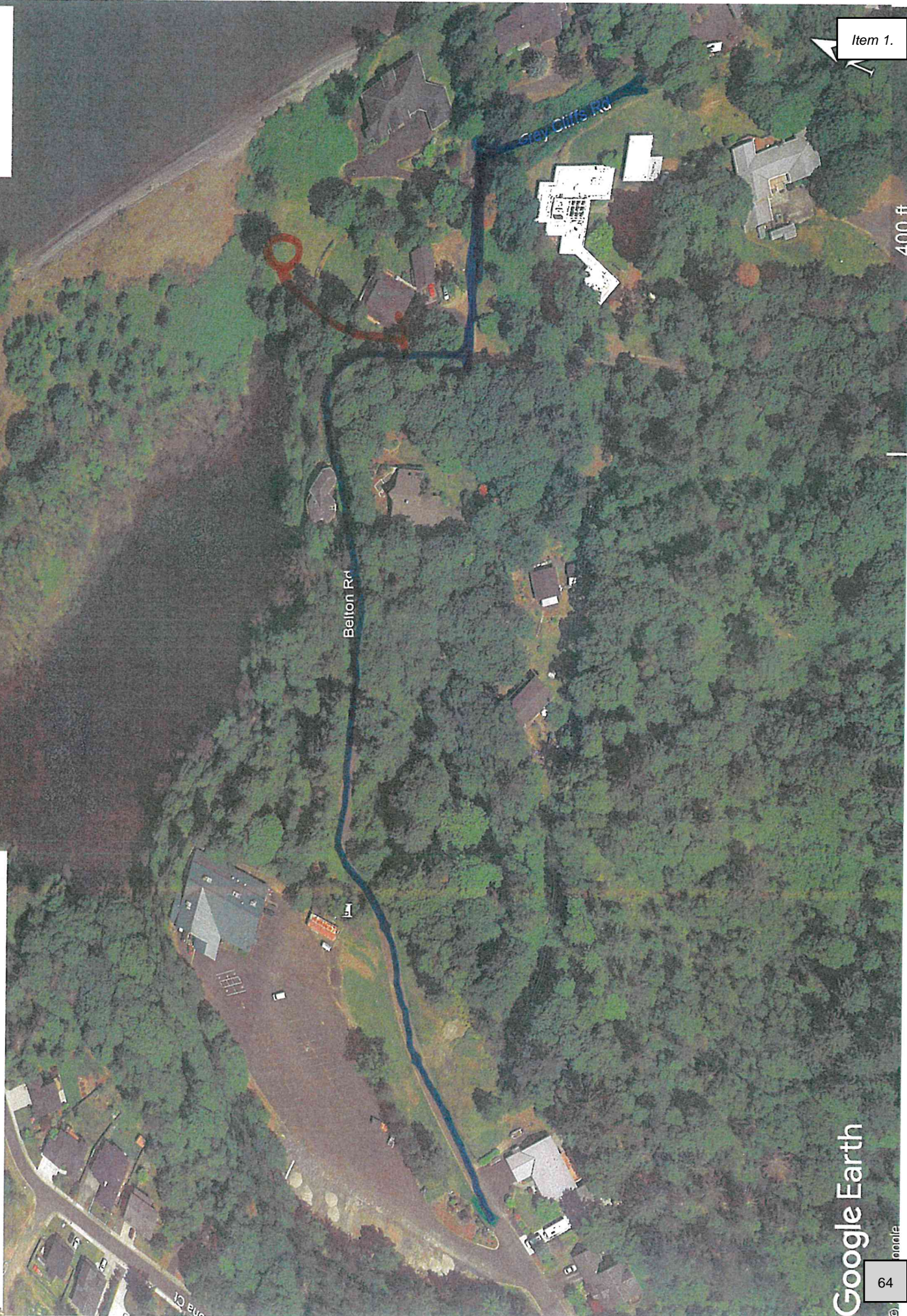
Google Earth

64

© 2006

400 ft

Item 1.





BELTON ROAD  
S.T.E.P. SYSTEM

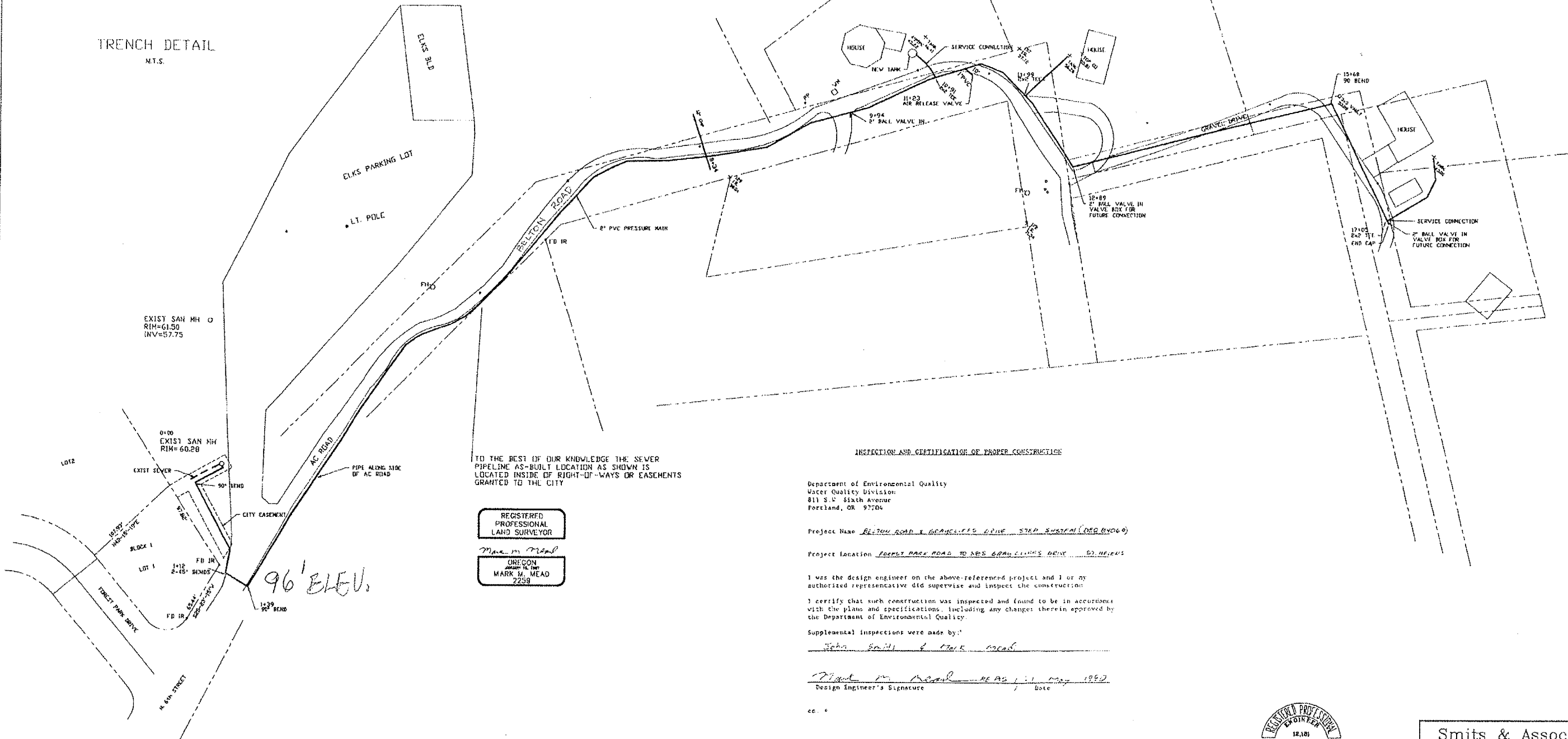
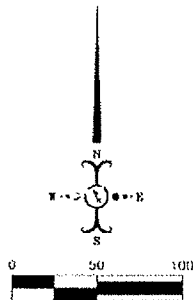
GRAYCLIFF DRIVE  
ST. HELENS, OREGON

NOTES

- 1. CONTRACTOR SHALL CALL 48 HOURS IN ADVANCE FOR UNDERGROUND UTILITY LOCATIONS: 1-800-424-5555
- 2. PROTECT PIPE FROM LARGE ROCK AND SHARP OBJECTS DURING BACKFILLING PROCESS.

2" SCHEDULE 40 PVC PRESSURE SEWER PIPE WITH 18 GAGE TRACER WIRE

TRENCH DETAIL  
N.T.S.



TO THE BEST OF OUR KNOWLEDGE THE SEWER PIPELINE AS-BUILT LOCATION AS SHOWN IS LOCATED INSIDE OF RIGHT-OF-WAYS OR EASEMENTS GRANTED TO THE CITY

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
  
Mark M. Mead  
OREGON  
JANUARY 14, 1992  
MARK M. MEAD  
2238

INSPECTION AND CERTIFICATION OF PROPER CONSTRUCTION

Department of Environmental Quality  
Water Quality Division  
811 S.W. Sixth Avenue  
Portland, OR 97204

Project Name BELTON ROAD & GRAYCLIFF DRIVE S.T.E.P. SYSTEM (DEB 84060)

Project Location FOREST PARK ROAD TO N.E.S. GRAYCLIFF DRIVE ST. HELENS

I was the design engineer on the above-referenced project and I or my authorized representative did supervise and inspect the construction.

I certify that such construction was inspected and found to be in accordance with the plans and specifications, including any changes therein approved by the Department of Environmental Quality.

Supplemental inspections were made by:  
John Smith & Mark Mead

Mark M. Mead AS 1:1 MAY 1992  
Design Engineer's Signature Date

cc. \*

\* Send copy to appropriate sewer system owner

REVISED AS-BUILT BY FOREST PARK ROAD 21 SECT. 1992  
AS-BUILT JULY 1990 M. M. MEAD



Smits & Associates  
Environmental Consultants • Designers  
14687 S.E. Kingdon Ave.  
Milwaukie, Oregon 97207-1943  
Ph. (503) 658-5023

DATE: AUG 1989 SHEET No. 1 OF 1

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JAN 30 2020  
CITY OF ST. HELENS

**Wetland Solutions Northwest, LLC**  
59446 Lytle Dr.  
St. Helens, Oregon 97051  
Stacy@WetlandSolutionsNW.com  
503-367-7177

RECEIVED  
JAN 27 2021  
CITY OF ST. HELENS

January 30, 2020

Andrew Schlumpberger  
160 Belton Road  
St. Helens, OR 97051

SUBJECT: 160 Belton Road, St. Helens Wetland/Waters Delineation  
Tax Map / Lots 5013400 / 200 & 50134BC / 1100

### Introduction and Background Information

A lot partition is proposed on the subject site. The subject site includes tax lot 200, located at 160 Belton Road which contains an existing residence, and tax lot 1100 which is undeveloped and extends north of tax lot 200 to the Columbia River. Three wetlands/waters are mapped on or in close proximity to the subject site in the City of St. Helens Local Wetland Inventory (LWI) (Otak, Inc. 1999). Dalton Lake (LWI unit D-16) is mapped adjacent to the northwest portion of tax lot 200, the Columbia River is mapped along the north edge of tax lot 1100, and wetland unit D-17 is mapped extending south of the Columbia River into tax lot 1100. Wetland units D-16 and D-17 are considered Type I significant wetlands, and the City requires a 75-foot protection zone adjacent to Type I significant wetlands. A 75-foot protection zone is also required adjacent to the top of bank of the Columbia River. The tax lot boundaries of the subject site and the LWI mapping are shown on Figure 1 which was obtained from Columbia County Web Maps (Columbia County 2020). A wetland/waters delineation was conducted on the site in order to map the actual location of on and off-site resources and the adjacent 75-foot protection zones to facilitate site planning.

### Methods & Results

A wetland/waters delineation was conducted on January 9, 2020 by Stacy Benjamin of Wetland Solutions Northwest, LLC in accordance with the methodology of the Corps of Engineers (Corps) Wetlands Delineation Manual (Environmental Laboratory 1987) and the Regional Supplement to the Corps Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0; Corps 2010) used by both the Oregon Department of State Lands and the Corps.

The ordinary high water (OHW) line/top of bank of the Columbia River was delineated based on field indicators including a vegetation line, with predominantly bare sandy soils occurring below the OHW line and a notable increase in grasses and weedy forbs occurring above the OHW line.



The wetland boundary of Dalton Lake is well-defined by steep topography, and the wetland boundary coincided with the edge of ponded water during the January 2020 site visit. The southern portion of the lake boundary is defined by a steep hillslope. The steep hillslope, which comprises the majority of the 75-foot protection zone, is vegetated with native trees and shrubs in the overstory including balsam poplar, red alder (*Alnus rubra*), and beaked hazelnut (*Corylus cornuta*), and mainly invasive species in the understory including Himalayan blackberry (*Rubus armeniacus*) and English ivy (*Hedera helix*). A small amount of native sword fern (*Polystichum munitum*) is also present. An existing narrow dirt footpath (approx. 2 feet wide) is present in the riparian protection zone, and a small amount of the upslope edge of the protection zone falls within the edge of an existing mowed lawn. Slopes adjacent to the east/northeast edge of Dalton Lake are more gradual. A dense thicket of Himalayan blackberry is present along the eastern edge of the lake, and a fringe of mainly native wetland vegetation consisting of red osier (*Cornus alba*), Oregon ash (*Fraxinus latifolia*) and reed canarygrass is present extending around the northeast portion of the lake.

Wetland D-17 was determined not to extend onto tax lot 1100, and the southern edge of wetland D-17 was delineated approximately 450 feet north of tax lot 1100. Wetland D-17 consists of a forested and scrub-shrub wetland vegetation community containing balsam poplar (*Populus balsamifera*) and Pacific willow (*Salix lasiandra*) in the overstory with reed canarygrass (*Phalaris arundinacea*) and tall scouring-rush (*Equisetum hyemale*) in the understory. Hydric soils were observed in the wetland, along with water-stained leaves indicating the presence of wetland hydrology. The south wetland boundary was delineated where the reed canarygrass understory transitioned to a Himalayan blackberry understory, soils became a more sandy texture which did not display hydric soil features, no indicators of wetland hydrology were observed, and site topography began to rise.

The boundary of Dalton Lake and the OHW of the Columbia River were professionally land surveyed by Reynolds Land Surveying, Inc (Figure 2), and the 75-foot protection zones were mapped. Site photographs are attached.

## References

Columbia County. 2020. Columbia County Web Maps. Available at: <http://webmap.co.columbia.or.us/geomoose2/>

Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual. Technical Report Y-87-1. Vicksburg, MS: U.S. Army Engineer Waterways Experiment Station.

Otak, Inc. 1999. Local Wetland Inventory, City of St. Helens, OR. Available at: [http://www.oregon.gov/dsl/WETLAND/Pages/lwi\\_disclaimer\\_agreed.aspx](http://www.oregon.gov/dsl/WETLAND/Pages/lwi_disclaimer_agreed.aspx).

U.S. Army Corps of Engineers. 2010. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0), ed. J.S. Wakeley, R.W. Lichvar, and C.V. Noble. ERDC/EL TR-10-3. Vicksburg, MS: U.S. Army Engineer Research and Development Center.

### **Attachments**

Figure 1. Tax lot map showing LWI mapping

Figure 2. Wetland & waters delineation map

Site photographs



160 Belton Road, St. Helens Wetland & Waters Delineation Figure 1. Site Location Map	↑	Wetland Solutions Northwest, LLC
	Scale approx. 1 inch = 200 ft	
Source: downloaded from: <a href="http://webmap.co.columbia.or.us/geomoose2/">http://webmap.co.columbia.or.us/geomoose2/</a>		January 2020

Owners:  
 and Lindsay  
 Berger  
 on Road  
 is, OR 97051

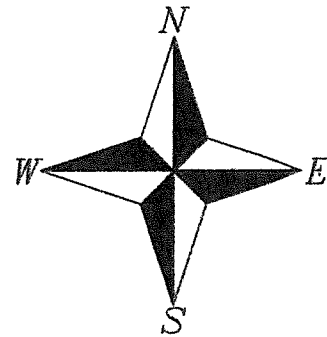
Parcel No.:  
 00-00201  
 0-01100

R10

Delineation by  
 Solutions Northwest, LLC

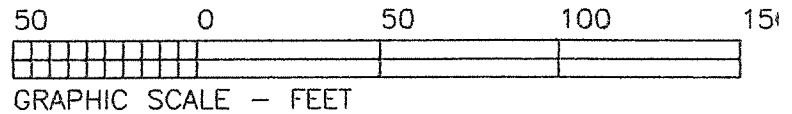
Lands Buffers were  
 d along the slope

Columbia River



Scale: 1"=50'

CF&SF:19054S



REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR

*David E. Reynolds*

OREGON  
 JULY 26, 1985  
 DAVID E. REYNOLDS  
 2157

RENEWAL DATE: 12-31-2020

Reynolds  
 Land Surveying, Inc.  
 32990 Stone Road  
 Warren, Oregon 97051  
 (503) 397-5516

### Parcel 2

46060 SQ.FT.  
 22565 SQ.FT. OUTSIDE  
 OF SENSITIVE LANDS

### Parcel 1

45900 SQ.FT.  
 43010 SQ.FT. OUTSIDE  
 OF SENSITIVE LANDS

Preliminary Partition Plat  
 For  
 Andrew & Lindsay Schlumpberger  
 Situated In The N.W. 1/4  
 Section 34, T.5N., R.1W., W.M.  
 City of St. Helens  
 Columbia County, Oregon  
 January 21, 2020





**Photo A.** View east of southern boundary of Dalton Lake and mixed native/invasive community in adjacent 75-foot protection zone.



**Photo B.** View west of invasive Himalayan blackberry community in 75-foot protection zone adjacent to eastern edge of Dalton Lake.





**Photo C.** View north of delineated OHW of Columbia River (red flag).



**Photo D.** View south of delineated OHW of Columbia River (red flag).



After recording return to:  
Daniel Goldstein, Esq.  
621 SW Morrison St, Ste 1050  
Portland, OR 97205



00279914202000123010040040

I, Elizabeth E. Huser, County Clerk for Columbia County, Oregon  
certify that the instrument identified herein was recorded in the Clerk  
records.

Elizabeth E. Huser - County Clerk

Document: Easement Extinguishment and Relinquishment  
Grantor: Tracey A. Hill, an individual  
Tracey A. Hill on behalf of the Hill Family Trust  
Grantees: Andrew Schlumpberger and Lindsay Schlumpberger

### Easement Extinguishment and Relinquishment

Grantor is the record owner of the following real property located in Columbia County, Oregon:

See Exhibit A, attached hereto and incorporated herein in by this reference (the "Benefitted Property")

Grantees are the record owners of the following real property located in Columbia County, Oregon:

See Exhibit B, attached hereto and incorporated herein in by this reference (the "Burdened Property")

Grantor is also the holder and beneficiary of that certain easement (Drainfield Easement) established "for the construction, maintenance, use and repair of an individual water-carried subsurface sewage disposal system," dated July 27, 1976 and recorded October 13, 1976 in Book 208 page 404 of the Records of Columbia County, Oregon, which encumbers the Burdened Property.

For good and valuable consideration, the receipt of which is hereby acknowledged, Grantor, on behalf of herself, her heirs, assigns, devisees, successors, and anyone else claiming right, title or interest in the Benefitted Property, hereby extinguishes, relinquishes, releases, terminates, waives, abandons, and reconveys the Drainfield Easement to the record owners of the Burdened Property, their heirs, devisees, successors, assigns, and anyone else claiming any right, title, or interest in the Burdened Property.

////

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QUIT CLAIM DEED – Page 1


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JAN 27 2021

CITY OF ST. HELENS

Dated this 23 day of November 2020.

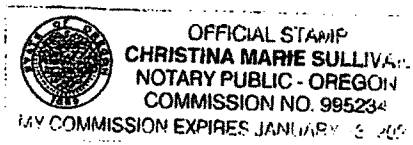
Grantor:

  
Tracey A. Hill

The foregoing instrument was acknowledged and executed before me this 23  
day of NOVEMBER, 2020, by Tracey A Hill.

  
Notary Public

My Commission Expires: JANUARY 13, 2024



## Exhibit A

Beginning at a point which is North 4 '35'30" West 1223.3 feet and East 1891.3 feet from the Northeast corner of "Rose Hill," Columbia County, Oregon, said point being on the left bank of the Columbia River; thence along low water line along said left bank North 31 '38' West a distance of 266.37 feet; thence South 69'24' West a distance of 227.37 feet; thence North 24'36'30" West to a point on the most Easterly North line of City Ordinance #1877 recorded August 18, 1969 in Book 17 4, Page 343, Deed Records of Columbia County, Oregon; thence South 60'21' West 153.57 feet; thence South 57'16' West 46.43 feet to the TRUE POINT OF BEGINNING of herein described tract, said point being the Northwest corner of tract described in Trust Deed recorded March 30, 1976 in Book 137, Page 12, Mortgage Records of Columbia County, Oregon; thence South 68'47'30" West 81.22 feet; thence South 64'47'30" West 73.10 feet; thence South 46'33' West 87.50 feet; thence South 34'02' East to the North line of 50 foot road conveyed to City of St. Helens by deed recorded October 12, 1971 in Deed Book 184, Page 11; thence North 69'24' East along the North line of said 50 foot road to the point of intersection with the West line of tract described in Mortgage Book 137, Page 12; thence North 24'36'30" West along said West line to the point of beginning.

## EXHIBIT ~~B~~ <sup>B</sup> LEGAL DESCRIPTION

A tract of land situate in the Northwest quarter of Section 34, Township 5 North, Range 1 West, Willamette Meridian, Columbia County, Oregon, more particularly described as follows:

**PARCEL 1:** Beginning at a point which is North 4°35'30" West 1223.3 feet and East 1891.3 feet from the Northeast corner of ROSE HILL, in the County of Columbia and State of Oregon, said point being on the left bank of the Columbia River; thence along low water line along said left bank North 31°38' West a distance of 266.87 feet; thence South 69°24' West a distance of 227.37 feet to the TRUE POINT OF BEGINNING; thence North 24°36'30" West to a point on the most Easterly North line of City Ordinance No. 1877 recorded August 18, 1969 in Book 174, page 343, Deed Records of Columbia County, Oregon; thence South 60°21' West 153.57 feet; thence South 57°16' West 46.43 feet; thence South 24°36'30" East 251.73 feet; thence South 16°02' East 6.3 feet; thence North 69°24' East 200 feet to the point of beginning. EXCEPTING THEREFROM that portion lying within 50 foot road conveyed to City of St. Helens by deed recorded October 12, 1971 in Book 184, page 11, Deed Records of Columbia County, Oregon.

**PARCEL 2:** Beginning at a point which is North 4°35 1/2' West 1223.3 feet and East 1891.3 feet from the Northeast corner of ROSE HILL, Columbia County, Oregon, said point being on the left bank of the Columbia River; thence along said lot water line along said left bank North 31°38' West a distance of 593.93 feet to the most Easterly Northeast corner of City Ordinance No. 1877, recorded August 18, 1969 in Book 174; page 343, Deed Records of Columbia County, Oregon; thence South 60°21' West along said most Easterly North line of said City Ordinance line 208.11 feet to the TRUE POINT OF BEGINNING; thence South 60°21' West along the said most Easterly North line of said City Ordinance line 153.57 feet; thence North 24°30 1/2' East to a point that is North 24°16 1/2' West from the true point of beginning; thence South 24°36 1/2' East to the true point of beginning.

**PARCEL 3:** Beginning at a point which is North 70°03'34" East 1377.04 feet and North 69°24'00" East 200.02 feet from the initial point of Belton Terrace, said point being the Southeast corner of the Richard Sorenson tract in the Northwest quarter of Section 34, Township 5 North, Range 1 West, Willamette Meridian, Columbia County, Oregon, said point is reported to be North 04°35'30" West 1223.30 feet and East 1891.30 feet and North 31°38'00" West 266.87 feet and South 69°24'00" West 227.37 feet from the Northeast corner of Rose Hill, as per plat on file and of record in the Columbia County Clerk's Office; thence North 24°38'20" West, along the Easterly line of said Sorenson tract, 175.69 feet to the TRUE POINT OF BEGINNING of the parcel herein described; thence, leaving said Sorenson East line, North 06°46'00" West a distance of 342.08 feet; thence North 65°11'41" East a distance of 96.04 feet to the low water line of the Columbia River; thence North 24°48'19" West along said low water line a distance of 82.74 feet to the most Northerly corner of Instrument No. 98-09246, on file and of record in the Columbia County Clerk's Office; thence South 24°31'22" West along the Northwestern line of said Instrument No. 98-09246 a distance of 265.39 feet to the Northerly corner of said Sorenson tract; thence South 24°38'20" East along the Easterly line of said Sorenson tract a distance of 235.05 feet to the true point of beginning.

**PARCEL 4:** Beginning at a point which is North 70°03'34" East 1377.04 feet and North 69°24'00" East 200.02 feet from the initial point of Belton Terrace, said point being the Southeast corner of the Richard Sorenson tract in the Northwest quarter of Section 34, Township 5 North, Range 1 West, Willamette Meridian, Columbia County, Oregon, said point is reported to be North 04°35'30" West 1223.30 feet and East 1891.30 feet and North 31°38'00" West 266.87 feet and South 69°24'00" West 227.37 feet from the Northeast corner of Rose Hill, as per plat on file and of record in the Columbia County Clerk's Office; thence North 24°38'20" West, along the Easterly line of said Sorenson tract, a distance of 410.74 feet to the most Northerly corner of said Sorenson tract and the TRUE POINT OF BEGINNING of the parcel herein described; thence North 24°31'22" East, along the Northwestern line of tract of land described under Columbia County Clerk's Instrument No. 98-09246, a distance of 265.39 feet to the low water line of the Columbia River; thence North 24°48'19" West along said low water line a distance of 17.26 feet; thence leaving said low water line South 65°11'41" West a distance of 125.00 feet; thence South 02°57'08" East a distance of 204.94 feet to the true point of beginning.



# Columbia River Fire & Rescue

## Fire Prevention Division

270 Columbia Blvd \* St Helens, Oregon \* 97051  
Phone (503)-397-2990 \* [www.crfr.com](http://www.crfr.com) \* FAX (503)-397-3198

Item 1.

November 30, 2020

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JAN 5 2021

CITY OF ST. HELENS

Andrew Schlumpberger  
160 Belton Road  
St. Helens, OR 97051

Mr. Schlumpberger,

This letter is regarding a driveway consultation I performed this morning on your proposed new house development site off Belton Road. This was not an initial driveway inspection, but a consultation of our Fire District's driveway standards to determine if a fire department access road is feasible to your proposed new home site.

After reviewing our Fire District's residential driveway standards with you this morning along with visiting your proposed driveway/house site, a fire department access road (driveway) is feasible. Our fire engines and ambulances should have no issues accessing your new home site on an approved driveway access road.

Regards,

James E. Christiansen  
CRFR Fire Inspector

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JAN 27 2021

CITY OF ST. HELENS



# FIRE MARSHAL

Columbia River Fire & Rescue / Scappoose Fire District



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JUN 1 2020

CITY OF ST. HELENS

Date: 05/29/2020

Andrew Schlumpberger

RE:

Belton Road Development Partition PT.1.20

Andrew Schlumpberger

Property Description: 160 Belton Road (5N1W-34BC1100 & 5N1W-43-201)

Mr. Schlumpberger:

I received your request to review the subject property identified above and provide comments for the partition that is being requested. This is in accordance to item number 6 of the conditions listed by the City of St. Helens in the Land Use Decision. The recommendations by the fire district are listed below and are in accordance with fire district ordinances and the Oregon Fire Code (OFC).

1. New construction as proposed will not conform to the OFC. Specifically, Section 503 (Access to buildings) and Appendix "D". The tradeoff for the access challenge will be the following conditions:
  - i. The building shall be protected by a residential automatic sprinkler system meeting all provisions of NFPA 13D.
  - ii. Signage that clearly identifies the location of the new structure is required.
2. All items that are identified in the Fire code Guide (Adopted by ordinance) need to be adhered to and completed by final occupancy and inspection of the building. This includes the adopted county driveway standard, included as part of the driveway permit process.
  - i. Driveway Permit
  - ii. Address Signs
3. The fire district would like to request to have an opportunity to conduct operational training on the building prior to occupancy. This will consist of tours to become familiar of the building layout as well as pre plan our response operations due to some of the access challenges.

Should you have any questions about anything else, please do not hesitate to give me a call.

Sincerely,

Jeff Picher

Division Chief

Fire Marshal (CRF&R / SRFD)

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CITY OF ST. HELENS

Columbia River Fire and Rescue / Scappoose Rural Fire District  
270 Columbia Blvd. St Helens, OR 97051 / 52751 Columbia River Hwy (P.O. BOX 625) Scappoose OR, 97056  
(503) 397-2990 / (503) 543-5026



**Triton Lawn & Yard Maintenance**

PO Box 1206  
 Rainier, OR 97048 US  
 503-793-7597  
 nealk13@gmail.com

**Estimate**

Andrew Shlumpberger  
 160 Belton Rd  
 St Helens, OR 97051

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 JAN 27 2021  
 CITY OF ST. HELENS

1023

05/27/2020

**2-Equipment:2-Excavator**

Move 2 fire hydrants from proposed Belton road right of way. This excludes cost associated with breaking, drilling or blasting rock.

35,000.00

35,000.00

**2-Equipment:2-Excavator**

Remove 14 trees from proposed Belton road right of way. Including stumps and roots.

1

18,000.00

18,000.00

**2-Equipment:2-Excavator**

Prepare roadway surface to Columbia County Private road standards. This excludes any cost associated with breaking, drilling or blasting of rock.

1

45,000.00

45,000.00

**2-Equipment:2-Excavator**

Pave road to Columbia County Private Road standards.

1

60,000.00

60,000.00

**1-Rock:3. 3 inch minus**

Base rock for road widening

1

7,000.00

7,000.00

**1-Rock:1. 3/4 inch minus**

Top Coat for road widening

1

1,800.00

1,800.00

**5-Other:Supplies**

New hydrants to meet fire department code

1

3,500.00

3,500.00

**2-Equipment:1-Solo Truck**

Haul rock to job site

1

6,000.00

6,000.00

**5-Other:Disposal Fee**

Disposal of fill, wood, waste and stumps

1

5,000.00

5,000.00

**TOTAL****\$181,300.00**

Accepted By

Accepted Date

Dear Planning Commission,

As a member of the community served by belton road I want to express my approval for the land partition, proposed by my neighbors Andrew and Lindsay Schlumpberger.

I have lived in the community where the new partition is proposed for many years. In this time I have seen changes occur including the construction of new homes and changes to existing terrain and roadways.

While it is known that this community is served by a long and narrow road, this neighborhood is also known to be safe. Many drivers navigate this roadway daily with little to no difficulty including the addition of delivery trucks and/or construction vehicles (only one single vehicle accident in last 30 years that I can recall).

I welcome the proposal of the Schlumpberger's new home and do not personally foresee any problems from the creation of one more home served by belton road.

Sincerely,

*Ferry Belcher*  
*Lynn L. Belcher*

105 Belton Road  
St. Helens, OR 97051

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JAN 27 2021  
CITY OF ST. HELENS

To whom it may concern:

We have lived off of Belton Rd on Greycliff Rd for many years, our home is one of the furthest homes serviced by the City's Step system, we live just down the road from the Schlumpberger's home, where we have not had any problems with the City's Step system, nor do we have any issues with the Schlumpberger's partitioning and building a new home closer to the river. As they have over 2 acres and with it meeting all the zoning requirements we do not see any reason why they should not be able to build a new home. As far as the safety of Grey Cliff Road and Belton Rd, we do not know of any accident that has occurred on either of these streets, as all of the neighbors drive at a safe speed due to the topography and the skinny streets that are present in this area.

Date 06/07/2020

Signed

Larry R Hough

Name LARRY HOUGH  
Address 575 GREY CLIFFS DRIVE  
St HELENS, OR 97051

Ph#

503-366-0434

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JAN 27 2021

CITY OF ST. HELENS

I am a neighbor of Andrew and Lindsay Schlumpberger and my property is adjacent to the land partition that the Schlumpberger's are proposing on 160 Belton Road.

The purpose of this letter is to show my support for their proposed land partition as I support their project and have no desire to express any objections.

Signed:

Address: 80 Belton Rd. St. Helens, OR 97051

Date: 1/14/21

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JAN 27 2021  
CITY OF ST. HELENS





101 SW Main Street, Suite 1100  
Portland, Oregon 97204

balljanik.com

t 503.228.2525  
f 503.295.1058

Item 1.

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FEB 05 2021

CITY OF ST. HELENS

## MEMORANDUM

**TO:** Jacob Graichen  
**FROM:** Damien Hall  
**DATE:** February 5, 2021  
**RE:** Improvements to Belton Road

### I. Background

The applicant proposes to partition an existing residential lot into two residential lots. The new residential lot to the north ("Parcel 2") is proposed to be accessed from Belton Road, a local collector, via private way across the new residential lot to the south ("Parcel 1"). The partition application does not propose any development on either parcel. Future residential development will be subject to additional review and approval by the City of St. Helens ("City").

While not required for a partition without concurrent development, the applicant is amenable to voluntarily improving the Belton Road right-of-way to a width of 24' at the location of the 90 degree turn adjacent to Parcel 1, as depicted on the submitted plans.

The balance of this memorandum details the applicable provisions of the St. Helens Municipal Code ("SHMC") and demonstrates that no street improvements are required for a partition without accompanying development. Even if the City should be inclined to interpret the SHMC to condition approval of this partition on concurrent or future street improvements, the City bears the burden to demonstrate that such improvements are roughly proportional to the impact of the proposed partition.

Finally, nothing in the SHMC precludes the City from agreeing to the voluntary street improvements proposed by the applicant or deferring street improvements to a future process. SHMC 17.152.030(5)(b) authorizes the City to determine that partial street improvements are appropriate and SHMC 17.152.030(1)(d) authorizes the City to accept a future improvement guarantee in lieu of street improvements.

### II. No Street Improvements are Required

Street improvements are only required in association with development. See SHMC 17.152.030(1)(a) ("Streets within a development and streets adjacent shall be improved...") and 17.152.030(1)(b) ("Development on site adjacent to nonstandard street shall require improvement of street..."). The applicant proposes only a partition with no accompanying "development," which as that term is used in the SHMC is limited to physical changes such

as construction. See definition of development, SHMC 17.16.010. Thus, the applicant is not required to improve Belton Road. Street improvement requirements are properly imposed upon a future application for site development.

### **III. Constitutional Limitations**

The applicant has provided an estimate of partial costs to improve Belton Road adjacent to the site. The estimate excludes breaking, drilling, and blasting rock. The shallow and hard nature of the basalt rock deposit upon which the site and the surrounding area is located and sensitivities related to blasting in residential areas result in an expensive and time consuming excavation. Even excluding the rock work, the estimate came in at \$181,300.

The costs of a full street improvement are not proportional (roughly or otherwise) to the nonexistent impact of the proposed partition. The impact is non-existent because no new residential use is proposed and no additional trips will be created by approval of the proposed partition. All residential use of Parcel 2 and associated impacts must be reviewed and approved in a subsequent action. Further, the City has the burden to demonstrate that any required street improvement is roughly proportional to the impacts of the proposed partition. The City cannot meet that burden because there are no impacts that flow from the partition application.

### **IV. Future Improvement Guarantee**

Even if the SHMC does require a street improvement despite there being no proposed development (it does not), and even if the City somehow meets its constitution burden to demonstrate that the required street improvement is roughly proportional to the nonexistent impact of the proposed partition (it cannot), City staff should still accept a future improvement guarantee in lieu of a street improvement.

“The director may accept a future improvement guarantee in lieu of street improvements if one or more of the following conditions exist ... (iii) Due to the nature of existing development on adjacent properties it is unlikely that street improvements would be extended in the foreseeable future and that improvement associated with the project under review does not, by itself, provide a significant improvement to street safety or capacity.”

SHMC 17.152.030(1)(d)(iii). A partial improvement to Belton Road along the frontage of Parcel 1 provides no capacity increase or safety increase. Such an improvement would result in a narrower roadway surface than the voluntary improvement and would not extend through the entire 90-degree turn, resulting in the retention of limited sight lines and developed road width.

Further, the established single-family residential pattern along Belton Road is unlikely to be redeveloped in the near foreseeable future. Thus, there will not be an opportunity for the



City to require street improvements that would connect to a half street improvement along the frontage of Parcel 1. Accordingly, the City may accept a future improvement guarantee in lieu of any street improvements. See SHMC 17.152.030(1)(d)(iii).

#### **V. Exception to Street Standards**

The SHMC expressly permits the City to approve a partition on streets with paved roadways that are less than standard width, such as Belton Road. SHMC 17.152.030(5)(b) authorizes an exception to the roadway width standards when the “potential adverse impacts exceed the public benefits the standards,” and directs the City to consider evaluating the public benefits in light of the criteria listed in subsection (5)(a).

Here, the proposed improvement would increase the width of the Belton Road at the 90 degree turn that neighbors and fire department personnel have identified as the location most in need of safety improvements. A half-street improvement along the frontage of the applicant’s parcel would result in a narrower roadway surface than the voluntary improvement and would not extend through the entire turn. Further, the standard improvement would not change anticipated traffic generation, would not result in the availability of on-street parking or bikeways, and would decrease safety for motorists and bicyclists compared to applicant’s proposed improvement. Thus, the proposed improvement would deliver additional public benefit.

The proposed improvement would also avoid removal of multiple mature trees, unnecessary grading and excavation of basalt rock, and potential impacts to adjacent wetlands. Such potential adverse impacts of the standard street improvement exceed the public benefits of the standard, which are negative compared to applicant’s proposed improvement. Thus, the City is expressly authorized to impose an alternative standard.

I am a neighbor of Andrew and Lindsay Schlumpberger and my property is adjacent to the land partition that the Schlumpberger's are proposing on 160 Belton Road.

The purpose of this letter is to show my support for their proposed land partition as I support their project and have no desire to express any objections.

Signed: Jerry Belcher

Address: 105 Belton Rd.  
St. Helens, OR 97051

Date: 24 Feb 2021

RECEIVED  
MAR 1 2021  
CITY OF ST. HELENS

I am a neighbor of Andrew and Lindsay Schlumpberger and my property is adjacent to the land partition that the Schlumpberger's are proposing on 160 Belton Road.

The purpose of this letter is to show my support for their proposed land partition as I support their project and have no desire to express any objections.

Signed: \_\_\_\_\_

*Larry R. Hough*

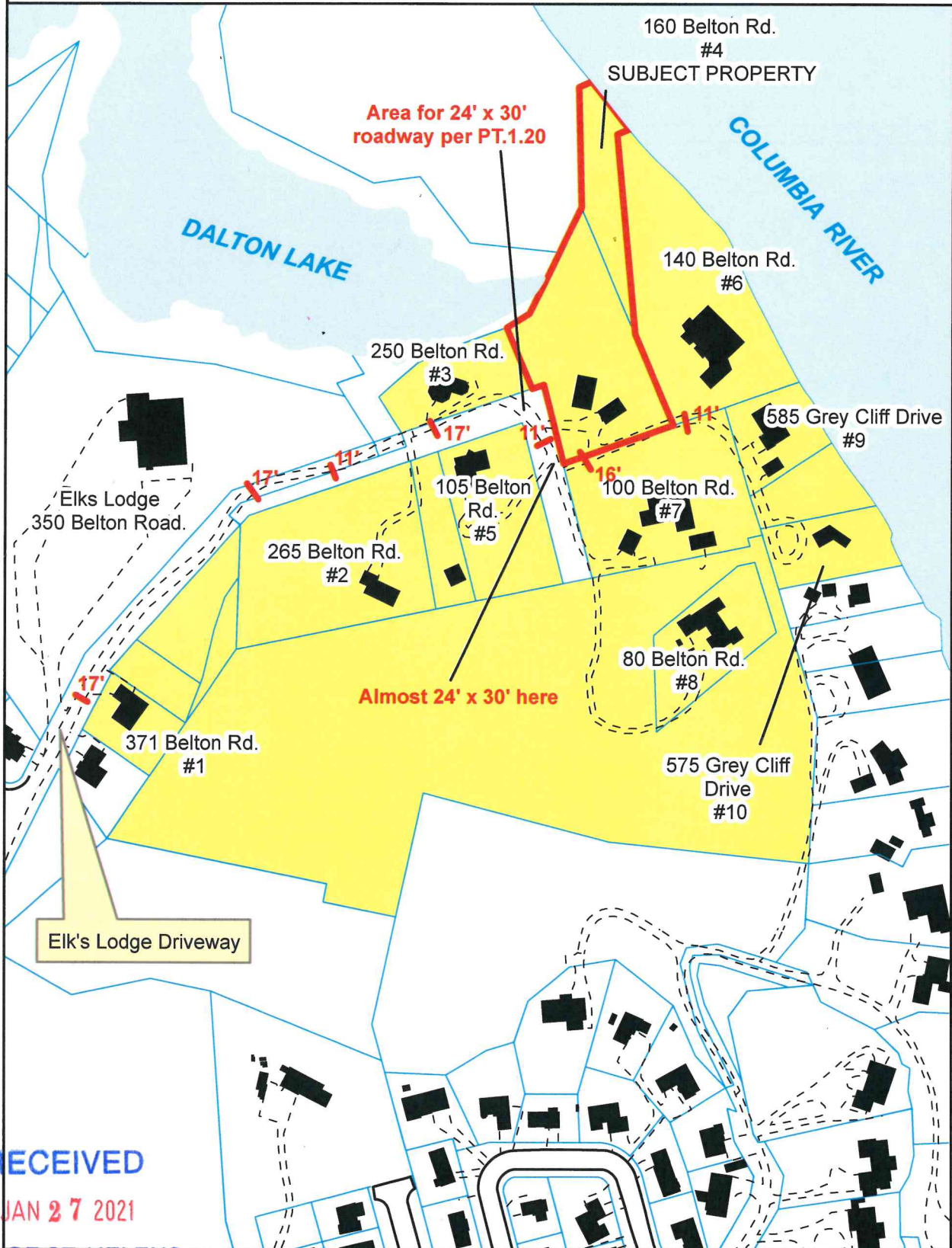
Address: 575 Grey Cliffs Drive, St. Helens OR 97051

Date: 2/24/21

RECEIVED  
MAR 1 2021  
CITY OF ST. HELENS

**FILE: AP.1.20**  
**ATTACHMENT**

**Number of Existing Dwellings Currently Accessed Via Belton Road**  
**After The Elks Lodge Driveway & Road Width Measurements**



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JAN 27 2021

CITY OF ST. HELENS

PROPOSED  
LOT  
LINES

ACCESS  
EASEMENT  
EXAMPLE

EXISTING PROP. LINE

EXISTING

PROP. LINE

CUL-DE-SAC LANE

ANY STREET

#### Private Drive/Access Easement Exhibit.

The purpose of this exhibit is to show how a typical access easement (private drive), when allowed in lieu of a public right-of-way, looks like. This is not to scale and does not indicate any approved development plan. It is strictly for explanation purposes only.



Andrew Schlumpberger and Lindsay  
Schlumpberger v. City of St. Helens

LUBA No. 2020-075

Local File: Appeal AP.1.20 of Partition  
PT.1.20

The hard copy version of this record consists of one volume.

## CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the date shown below, I filed a certified copy of the **Record** by first class mail, postage prepaid, on:

Oregon Land Use Board of Appeals  
DSL Building  
775 Summer Street NE, Suite 330  
Salem OR 97301

I further hereby certify that on the date shown below, I served a true and correct copy of the **Record** by first class mail, postage prepaid, on:

Damien R. Hall  
Ball Janik LLP  
101 SW Main Street Suite 1100  
Portland, OR 97204  
Attorney for Petitioners

Daniel H. Kearns  
Reeve Kearns PC  
621 SW Morrison Street Suite 510  
Portland, OR 97205  
Attorney for Intervenor-Respondent

DATED: September 9, 2020.




---

Timothy V. Ramis, OSB # 753110  
Attorney for Respondent City of  
St. Helens

CERTIFICATE OF FILING AND SERVICE

JORDAN RAMIS PC  
Attorneys at Law  
2 Centerpointe Dr., 6<sup>th</sup> Fl.  
Lake Oswego OR 97035  
Telephone: 503.598.7070 Fax: 503.598.7373

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**Exhibits Retained by City Until Time of Oral Argument Under OAR 661-010-0025(2):**

1. DVD Recording of Planning Commission Meeting July 1, 2020
2. DVD Recording of Planning Commission Meeting June 9, 2020

**AFFIDAVIT OF MAILING**

STATE OF OREGON                     )  
   )  
 County of Columbia                ) ss.  
   )  
 City of St. Helens                 )

I, Christina Sullivan, being first duly sworn on oath, depose and say:

1. That I hereby certify that I mailed a copy of the attached document(s) to the affected parties listed on the attached sheet(s); and

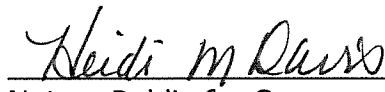
2. That I served said notice by depositing a copy thereof in the United States Mail at St. Helens, Oregon, on **July 7, 2020**. I further state that said copies were enclosed in envelopes with postage thereon prepaid and that said copies were sent by first class mail.



Christina Sullivan  
 Community Development Administrative Assistant

Subscribed and sworn to before me this 7<sup>th</sup> day of July, 2020



  
 Notary Public for Oregon

Reference: **Tracey A. Hill Family Trust**  
**Appeal / AP.1.20 (Appeal of PT.1.20)**  
**5N1W-34BC-1100 & 5N1W-34-201**  
**160 Belton Road**



## Findings of Fact & Conclusions of Law

### Notification List

**Date Mailed:** July 7, 2020

**Subject:** Tracey A. Hill Family Trust  
 Appeal / AP.1.20 (Appeal of PT.1.20)  
 5N1W-34BC-1100 & 5N1W-34-201  
 160 Belton Road

**The Findings of Fact & Conclusions of Law with decision letter were mailed to:**

<b><u>Applicant:</u></b>	<b><u>Property Owner:</u></b>
Tracey A. Hill Family Trust 250 Belton Road St. Helens, OR 97051	Andrew & Lindsay Schlumpberger 160 Belton Road St. Helens, OR 97051

**A copy of the decision letter was mailed to:**

**Interested Parties:**

Patrick Birkle	Hunter Blashill
Robin Nunn	Kristen Quinlan
Ron Schlumpberger	Robert & Jeanne Sorenson
Kathleen Ward	

**A copy of the decision letter was e-mailed to:**

**Referrals:**

None	
------	--

Notice Area

	A	B	C	D	E
1	OWNER	M_ADDRESS	M_CITY	M_STATE	ZIP
2	Patrick Birkle	254 S 14th St.	St. Helens	OR	97051
3	Robin Nunn	100 Belton Road	St. Helens	OR	97051
4	Ron Schlumpberger	1400 2nd St.	Columbia City	OR	97018
5	Kathleen Ward	140 Belton Road	St. Helens	OR	97051
6	Hunter Blashill	1020 SW 35th St.	Corvallis	OR	97333
7	Kristin Quinlan	2835 NW Cumberland Road	Portland	OR	97210
8	Robert & Jeanne Sorenson	488 Palmer Dr N	Keizer	OR	97303
9					
10					



265 Strand Street  
St. Helens, Oregon  
97051

Item 1.

## NOTICE OF DECISION

July 7, 2020

### RE: Appeal AP.1.20 of Partition PT.1.20

Dear applicant/interested party,

The **City of St Helens Planning Commission** denied the application for the Partition referenced above on appeal.

All required notices pursuant to SHMC 17.24.130 have been met. The adopted findings of fact, decision, and statement of conditions, as applicable, are on file at City Hall and are available for review during normal business hours. Copies are available for a nominal charge.

This decision of the City Council may be appealed to the Oregon Land Use Board of Appeals (LUBA) pursuant to the applicable State laws (e.g., see ORS 197.830). Generally, a person may petition LUBA for review of a land use decision or a limited land use decision if they filed a notice of intent to appeal with LUBA and presented testimony or evidence into the record. You normally have 21 calendar days from the date of final decision to file a notice of intent to appeal. If you desire to appeal this decision, you should contact LUBA to obtain further instructions and to confirm your rights to appeal.

The Oregon Land Use Board of Appeal's contact information is as follows:

Address: 775 Summer Street NE, Suite 330  
Salem, Oregon 97301-1283

Phone: 503-373-1265

Email: [LUBASupport@oregon.gov](mailto:LUBASupport@oregon.gov)

Internet: <http://www.oregon.gov/luba>

If you have any questions, please contact this office. Some information such as the St. Helens Municipal Code (SHMC) can also be obtained at the City's website: [www.ci.st-helens.or.us](http://www.ci.st-helens.or.us).

Respectfully yours,

Jacob A. Graichen, AICP, City Planner

**CITY OF ST. HELENS PLANNING DEPARTMENT  
FINDINGS OF FACT AND CONCLUSIONS OF LAW  
Appeal AP.1.20 of Partition PT.1.20**

**APPELLANT:** Tracy A. Hill for Tracy A. Hill Family Trust

**APPLICANT:** Andrew and Lindsay Schlumpberger

**OWNER:** Andrew and Lindsay Schlumpberger

**ZONING:** Suburban Residential, R10

**LOCATION:** 160 Belton Road; 5N1W-34BC-1100 and 5N1W-34-201

**PROPOSAL:** 2-parcel Partition

**SITE INFORMATION / BACKGROUND**

The subject property is located along the Columbia River, Dalton Lake and Belton Road. Belton Road provides access. The Planning Administrator originally approved the Partition request PT.1.20 on March 25, 2020. The City received various comments about that decision and the Planning Administrator issued an amended decision on April 15, 2020 in response to some of those comments. An appeal of that decision was filed by the appellant on May 1, 2020.

**PUBLIC HEARING & NOTICE**

Hearing dates are as follows: June 9, 2020 before the Planning Commission. Deliberations were continued to July 1, 2020 after the record was left open for two weeks, with a third week for final written argument.

Notice of this proposal was sent to surrounding property owners within 300 feet of the subject property(ies) on May 21, 2020 via first class mail. Notice was sent to agencies by mail or e-mail on the same date. Notice was published in the The Chronicle on May 27, 2020.

**APPLICATION COMPLETENESS**

The original application PT.1.20 was originally received on January 23, 2020.

Staff identified missing information or other aspects that rendered the application incomplete and notified the applicant of the issue pursuant to SHMC 17.24.050 shortly thereafter. The tree plan as required for land divisions per SHMC 17.132.025 was a key missing element. After explaining what is required for tree plans, the applicant submitted something, but it was insufficient. Staff also requested a title report to understand the deed restrictions of the site as required by SHMC 17.140.070(2); the applicant provided a partial report, but staff had to acquire copies of the deed restrictions from the County.

As such, the application was complete on the 31<sup>st</sup> day following receipt of the original application pursuant to SHMC 17.24.050(7), which is February 23, 2020. Based on this “completion date” the 120<sup>th</sup> day would be June 22, 2020.

An initial administrative decision was issued on March 25<sup>th</sup> and amended on April 15, 2020. The amended decision was appealed to the Planning Commission who held a public hearing on the matter on June 9, 2020. At the June 9, 2020 public hearing, there was a request to leave the record open for additional written testimony and for final written argument. At the same hearing, the applicant agreed to an extension of the 120-day rule commensurate with the time for the additional written testimony and final written argument given the Planning Commission deliberates on July 1, 2020 instead of their normal July 14<sup>th</sup> meeting.

The record was left open for 14 days (to June 23, 2020) following the June 9<sup>th</sup> public hearing. The seven additional days to June 30, 2020 for final written argument does not contribute to the 120 days per ORS 197.763(6)(e). So this combined with the applicant's granted extension adds three weeks (21 days) to the "120-day rule."

**Thus, the 120-day rule (ORS 227.178) for final action for this land use decision is July 13, 2020** (i.e., June 22, 2020 + 21 days).

### APPLICABLE CRITERIA, ANALYSIS & FINDINGS

#### SHMC 17.140.040 – Partition approval criteria.

A request to partition land shall meet all of the following criteria (1-5):

**(1)** The proposal conforms with the city's comprehensive plan;

**Finding(s):** There is no known conflict with the specific Comprehensive Plan policies identified in Chapter 19.12 SHMC.

There is no known conflict with the addendums to the Comprehensive Plan which includes Economic Opportunities Analysis (Ord. No. 3101), Waterfront Prioritization Plan (Ord. No. 3148), the Transportation Systems Plan (Ord. No. 3150), the Corridor Master Plan (Ord. No. 3181), the Parks & Trails Master Plan (Ord. No. 3191), the Riverfront Connector Plan (Ord. No. 3241), and the Housing Needs Analysis (Ord. No. 3244).

**(2)** The proposed partition complies with all statutory and ordinance requirements and regulations;

**Finding(s):** New lines do not create any new substandard compliance with the R10 zone standards, except as described herein.

There is area of special flood hazard (i.e., 100 year flood) associated with the Columbia River. Pursuant to SHMC 17.46.050(1)(g)(ii) this Partition must:

- (A) Be consistent with the need to minimize flood damage.
- (B) Have public utilities and facilities such as sewer, gas, electrical, and water systems, located and constructed to minimize or eliminate flood damage;
- (C) Have adequate drainage provided to reduce exposure to flood hazards.

Based on the Flood Insurance Rate Maps (FIRMS), there appears to be adequate area outside of the floodplain to meet these requirements. It is possible that any development of Parcel 2 can



avoid this. Further consideration when Parcel 2 is developed. City may require elevation data to ensure any development is outside of the floodplain.

There is considerable nonnative blackberry growth within the protection zones of both the Columbia River and Dalton Lake. Removal of invasive species does not require a permit if done by electric or handheld (non-power assisted) equipment per SHMC 17.40.035(1)(c). If power assisted equipment or machinery is used a permit is required. See SHMC 17.40.040(6)(d). See Chapter 17.40 for further details.

Per SHMC 17.132.025 a tree plan is required. Most trees can probably be saved, but some are proposed to be removal eventually for driveway and utility service to Parcel 2. Trees within protection zones are already protected per Chapter 17.40 SHMC. A tree plan was provided during the appeal process. Tree replacement shall be required when future development occurs, as applicable. A protection program defining standards and methods that will be used by the applicant to protect trees during and after construction is a code requirement related to this.

Utilities are already underground in this area. This is required.

However, due to the easement recorded in 1976 as Book 208, Page 404 Columbia County Clerk's records for "the construction, maintenance, use and repair of an individual water-carried subsurface sewage disposal system" on the subject property for the benefit of another property (250 Belton Road, owned by the appellant) the Commission finds that Parcel 2 is substantially encumbered combined with floodplain, wetland and riparian protection zones, requirements for emergency vehicle access/maneuvering and other factors. This creates substantial impediment. And combined with the uncertainty as to how parcel 2 will be developed under these circumstances, whether or not Parcel 2 is a viable or developable parcel is unknown. **Thus, the Commission finds it cannot approve this Partition.**

**(3)** Adequate public facilities are available to serve the proposal (to address transportation facilities in this regard, a traffic impact analysis shall be prepared, as applicable, pursuant to Chapter 17.156 SHMC);

**Finding(s): Water** is available. There is a water main within the Belton Road right-of-way along the west side of the subject property and along the south side of the property. For the purpose of this Partition, whether or not Parcel 2 will have access to the southerly water main is unknown, but it is at least available from the Belton Road right-of-way to Parcel 2 via proposed easements as shown on the preliminary plat.

**Sanitary sewer** is available. When 160 Belton Road was originally built in 1976 it was connected to an on-site septic system with holding tank and drain field. Around the late 1980s with further improvements in the early 1990s a septic tank effluent pump (STEP) system was installed. This is a pressurized sanitary sewer system with limited capacity. Development off Belton Road (and the connected leg of Grey Cliffs Drive) is dependent on this STEP system or on-site (septic systems) facilities.

Sometime after the STEP system was installed, the subject property is assumed to have connected; it currently gets billed for both water and sanitary sewer. Moreover, past Columbia County permits show that the drain field for the on-site (septic system) was shared with 250

Belton Road (adjacent property to the west). 250 Belton Road also currently gets a water and sewer bill; thus, is assumed to have connected to the STEP system.

The applicant provided an analysis of the STEP system by a Oregon Registered Professional Engineer that notes that the STEP system has eight connections and there is the potential capacity for more. Proposed Parcel 1 is already served and Parcel 2 has the ability to be served.

**Storm Water.** Both the Columbia River and Dalton Lake are nearby. There were some concerns received during the PT.1.20 process (before the appeal) about storm water impacts to other properties. The city recognizes these concerns as germane to physical work on the property. However, the city's storm water provisions would apply regardless of the land division.

**Street system/access.** The street system for this area is problematic. There are currently about ten homes accessed by a single narrow road (Belton Road / Grey Cliffs Drive) with no outlet, starting from the driveway to the Elks Lodge at 350 Belton Road and proceeding easterly to road terminus. The first approximate 500 feet of this section of road is paved at a width of approximately 17 feet, thereafter the width is around 11' in most places. This doesn't meet any current standard for a public or private street that accesses 10+ dwellings.

This partition will create a new parcel accessed by a substandard street, which will increase use of the street more than possible now considering *existing* properties. The partitioning of the property will result in increased vehicular trips for the permanent improvements of Parcel 2 and construction leading to those improvements.

Public road standards are generally addressed in Chapter 17.152 SHMC. There are several types of public road standards. Belton Road is classified as a "local street" per the City's Transportation Systems Plan. As applicable to the analysis of this Partition:

- Local street, normal: 34' roadway width. No max dwelling unit limit.
- Local "skinny" street: 20' or 26' roadway width. Limited to 200 ADT (i.e., about 20 detached single-family dwellings).
- Cul-de-sac (essential a local street that terminates at one end): limited to 20 dwelling units; Normal max length is 400'.

Belton road (with Grey Cliffs Drive), starting from just after the Elks Lodge driveway at 350 Belton Road, currently serves about 10 detached single family dwellings, is much longer than 400', and is predominately less than 20' wide over its course as described above.

No public road standard is met (except the 50' right-of-way, which is the normal width for a local classified street). However, per SHMC 17.152.030(5)(b):

(b) Improvements to streets shall be made according to adopted city standards, unless the approval authority determines that the standards will result in an unacceptable adverse impact on existing development or on the proposed development or on natural features such as wetlands, steep

slopes or existing mature trees. In approving an exception to the standards, the approval authority shall determine that the potential adverse impacts exceed the public benefits of the standards. In evaluating the public benefits, the approval authority shall consider the criteria listed in subsection (5)(a) of this section.

So alternate designs to public road standards can be considered.

Per SHMC 17.152.030(3) the approval authority can approve an access easement instead of a public road when “such an easement is the only reasonable method by which a lot, large enough to develop, can be created.” It references Chapter 17.84 SHMC for the standards.

Though this would normally apply to the access easement for Parcel 2 (see accessway findings starting at the bottom of page 8), staff also considered the “access easement” alternative improvements for Belon Road itself before the Partition was appealed. The road width standards for this are:

- Figure 15 – 3 to 6 dwelling units need at least 20 feet.
- Figure 16 – 3 to 19 multidwellings need at least 24 feet for two way.

Again, these physical “access easement” standards are not met. In the Partition PT.1.20 decision staff considered SHMC 17.84.070(4):

(4) Vehicle turnouts (providing a minimum total driveway width of 24 feet for a distance of at least 30 feet) may be required so as to reduce the need for excessive vehicular backing motions in situations where two vehicles traveling in opposite directions meet on driveways in excess of 200 feet in length.

This was a condition of PT.1.20 as amended with a focus on an approximate 90-degree angle of the Belton Road right-of-way that is a blind corner concern based on citizen comments received. This blind corner also abuts the subject property.

The Planning Commission discussed overall access to the subject property and expressed concerns but did not make any specific findings as to whether or not it was acceptable to use the “access easement” standards as an alternative public road design or not, or otherwise. Since they based denial on a separate issue, they did not draw any access conclusions.

The street is paved where it lies within public right-of-way, but turns to gravel when it leaves the right-of-way along the south side of the subject property. Paving is required in residential areas per current standards.

The street system provides **access**. Access to a proposed parcel is a critical element. There is an easement on the property that lies between the Belton Road right-of-way and proposed Parcel 2. It also substantially encumbers access to Parcel 2 from the south side.

This easement was recorded in 1976 as Book 208, Page 404 Columbia County Clerk’s records and is for:

“the construction, maintenance, use and repair of an individual water-carried subsurface sewage disposal system”

It appears to be for the benefit of property addressed as 250 Belton Road (owed by the appellant). As described above, both the subject property and 250 Belton Road appear to be connected to the STEP system. Despite this, the easement remains. Even though the easement may not have been used in many years, it may not be legally abandoned. Oregon law requires more than nonuse to prove abandonment. Some related case law:

In *Wiser v. Elliott*, 228 Or. App. 489, 495, 209 P.3d 337, 341 (2009), the Oregon Court of Appeals stated:

“We have since held that nonuse of an easement is insufficient by itself to prove abandonment. In *Conner v. Lucas*, 141 Or. App. 531, 538, 920 P.2d 171 (1996), we reiterated that,...

“[i]n *Abbott v. Thompson*, 56 Or. App. 311, 641 P.2d 652, *rev. den.* 293 Or. 103, 648 P.2d 851 (1982), we explained that nonuse alone does not constitute the abandonment of an easement. A party claiming abandonment must show in addition to nonuse ‘either [a] verbal expression of an intent to abandon or conduct inconsistent with an intention to make further use.’ *Id.* at 316, 641 P.2d 652.”

It is not the City’s decision to determine as to whether the easement is abandoned; that is a private matter being a private easement. However, it exists on deed records and is a substantial encumbrance to access proposed Parcel 2; thus, it does impact the division of the subject property. Much testimony was entered into the record about the validity (appellant) and invalidity (applicant) of the easement. **The Planning Commission finds that this easement obstructs access and utilities for Parcel 2** (per Columbia County who administers on-site sanitary sewer systems, underground utilities are required to be 10’ from drain fields and driveways are not allowed over drain fields) **and that a partition cannot be approved until the easement is removed.** The Commission noted that the applicant could apply for a Partition again in the future, in accordance with law, if and when the easement is removed.

**(4)** All proposed lots conform to the size and dimensional requirements of this code; and

**Finding(s):** There are three aspects of this criterion, Sensitive Lands, the provisions of the R10 zoning district, and an existing private easement.

**Sensitive Lands.** The site abuts the Columbia River (with 75’ upland protection zone required per Chapter 17.40 SHMC) and Wetland D-16, otherwise known as Dalton Lake (with 75’ upland protection zone required per Chapter 17.40 SHMC). The applicant has conducted an Environmental Assessment to determine the boundaries of these sensitive lands and their respective buffers, which are reflected on the preliminary plat.

The City’s local wetland inventory also identified Wetland D-17 on or close to the property, but the Environmental Assessment effort determined D-17 was not close to the property and does not impact this partition.

For subdivisions (creating 4 or more lots), significant wetlands and riparian areas and their protection zones are required to be part of dedicated preservation tracts to be managed by a homeowners association or other responsible entity. Partitions do not create tracts. Thus, the City has allowed easements as a substitute to preserve these areas (e.g., see P.P. No. 2009-17). However, the intent of this is for newly created properties to be “whole” excluding the sensitive lands and protection zones. “Whole” means that the net property not encumbered needs to meet the standards of the Development Code.

Thus, the **R10 zoning district** standards. The minimum lot size of is 10,000 square feet. The net area excluding the wetland, riparian area and protection zones still exceeds this for both parcels. The minimum lot width at the building line is 70’ or 80’ for a corner lot. Parcel 1 is a corner lot and exceeds this. Parcel 2 gets close to 70’ in its net area, but still meets the standard.

The minimum lot width at the street is 60’ or 30’ along an approved cul-de-sac (i.e., dead-end road). Parcel 1 meets this and Parcel 2 meets the cul-de-sac standard given the 30’, increasing to 40’ wide access and utility easement off Belton Road.

Minimum lot depth is 100 feet. This is met for both parcels using the net area

**Private easement.** Due to the easement recorded in 1976 as Book 208, Page 404 Columbia County Clerk’s records for “the construction, maintenance, use and repair of an individual water-carried subsurface sewage disposal system” on the subject property for the benefit of another property (250 Belton Road, owned by the appellant) the Commission finds that Parcel 2 is substantially encumbered combined with floodplain, wetland and riparian protection zones, requirements for emergency vehicle access/maneuvering and other factors. This creates substantial impediment. And combined with the uncertainty as to how parcel 2 will be developed under these circumstances, whether or not Parcel 2 is a viable or developable parcel is unknown. The easement also blocks access to Parcel 2. **Thus, the Commission finds it cannot approve this Partition**

**(5)** All proposed improvements meet city and applicable agency standards.

**Finding(s):** This would be a requirement if approved. Fire Marshall consideration is particularly important given limited access to the area.

\* \* \*

### **SHMC 17.140.050 – Special provisions for parcels created by through the partition process.**

**(1)** Lot Dimensions. Lot size, width, shape and orientation shall be appropriate for the location of the development and for the type of use contemplated, and:

- (a) No lot shall be dimensioned to contain part of an existing or proposed public right-of-way;
- (b) The depth of all lots shall not exceed two and one-half times the average width, unless the parcel is less than one and one-half times the minimum lot size of the applicable zoning district; and
- (c) Depth and width of properties zoned for commercial and industrial purposes shall be adequate to provide for the off-street parking and service facilities required by the type of use proposed.



**Finding(s):** (a) No existing or proposed right-of-way is impacted. (b) Excluding sensitive land protection buffers the net area for Parcel 2 has an average width of approximately 90' and a depth of approximately 230'. This meets the depth to width ratio requirement more-or-less. (c) Not applicable; the property is zoned residential.

**(2) Through Lots.** Through lots shall be avoided except where they are essential to provide separation of residential development from major traffic arterials or to overcome specific disadvantages of topography and orientation, and:

- (a) A planting buffer at least 10 feet wide is required abutting the arterial rights-of-way; and
- (b) All through lots shall provide the required front yard setback on each street.

**Finding(s):** No through lot is proposed.

**(3) Large Lots.** In dividing tracts into large lots or parcels which at some future time are likely to be redivided, the approving authority may require that the lots be of such size and shape, and be so divided into building sites, and contain such site restrictions as will provide for the extension and opening of streets at intervals which will permit a subsequent division of any tract into lots or parcels of smaller size, and:

- (a) The land division shall be denied if the proposed large development lot does not provide for the future division of the lots and future extension of public facilities.

**Finding(s):** Given surrounding wetlands, the Columbia River, floodplain associated with the Columbia River, one narrow road access for this neighborhood, this neighborhood's wildland-urban interface (a transition area between wildland and human development with a higher wildfire risk), and limited sanitary sewer capacity, density promotion is unwise in this area. Redevelopment planning such as "shadow plats" are not warranted for this proposal.

**(4) Fire Protection.** The fire district may require the installation of a fire hydrant where the length of an accessway would have a detrimental effect on firefighting capabilities.

**Finding(s):** There is an existing fire hydrant along Belton Road by the southern edge of the subject property.

The access easement proposed to serve Parcel 2 will exceed 150 feet. Per SHMC 17.152.030(3)(a), when access easements exceed 150 feet, they shall be improved in accordance with the fire code. When Parcel 2 is developed, its driveway will need to be able to accommodate emergency vehicles. Any requirement of the Fire Marshall shall be met.

**(5) Reciprocal Easements.** Where a common drive is to be provided to serve more than one lot, a reciprocal easement which will ensure access and maintenance rights shall be recorded with the approved partition map.

**Finding(s):** An access easement is proposed to access Parcel 2 from the Belton Road right-of-way through Parcel 1. Maintenance agreement shall be required.

**(6) Accessway.** Any accessway shall comply with the standards set forth in Chapter 17.84 SHMC, Access, Egress, and Circulation.

**Finding(s):** The access easement proposed to provide street connection to proposed Parcel 2 encompasses the southerly 30' of Parcel 1 (where there are previously recorded access and utility easements for other parties) and the west 40' of Parcel 1.

Parcel 2 is likely to be developed as a detached single-family dwelling and though not currently allowed, potentially a duplex given Oregon HB 2001, which requires St. Helens to allow duplexes in lands zoned for single-family dwellings by June 30, 2021. The minimum easement for up to two dwellings (like a duplex) is 15' width with a minimum 10' pavement width.

The other issue is the other properties that use the first leg of the proposed easement. The following detached single-family dwellings/properties access this area from Belton Road:

1. 140 Belton Road; 5N1W-34-200
2. 585 Grey Cliffs Drive; 5N1W-34BC-901
3. 5N1W-34BC-900 (this Land Partition decision is not the mechanism to determine if this is a legal lot of record).
4. 575 Grey Cliffs Drive; 5N1W-34BC-1301

Thus, there are three detached single-family dwelling that use the access. With the new Parcel 2, it would be four. The minimum easement for 3-6 dwelling units is 24' (not bearing on this application) with a pavement width of 20 feet.

In addition, the following requirements apply under SHMC 17.84.070:

- (2) Private residential access drives shall be provided and maintained in accordance with the provisions of the Uniform Fire Code.
- (3) Access drives in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus in accordance with the engineering standards of SHMC Title 18 and/or as approved by the fire marshal.
- (4) Vehicle turnouts (providing a minimum total driveway width of 24 feet for a distance of at least 30 feet) may be required so as to reduce the need for excessive vehicular backing motions in situations where two vehicles traveling in opposite directions meet on driveways in excess of 200 feet in length.

New access to Parcel 2 will be subject to Fire Marshall/Fire Code standards. This includes a turn-around area.

New access to Parcel 2 shall be paved as required by the Development Code. When Parcel 2 is developed, it will need a minimum 10' wide paved driveway from Belton Road to the dwelling or other principal use proposed. This must be within the easement on Parcel 1 for Parcel 2 (cannot be on adjacent property). This is important to consider as the private road along the south side of the subject property is mostly outside of the property where it intersects Belton Road, but angles into the property progressing eastward.

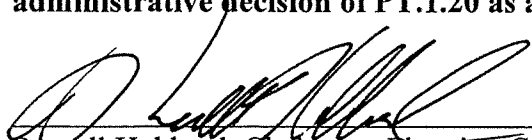
These accessway findings apply to how Parcel 2 will be access through Parcel 1. Overall access to the site via Belton Road is discussed above. They are related but separate matters.

**(7)** The streets and roads are laid out so as to conform to the plats of subdivisions and maps of partitions already approved for adjoining property as to width, general direction and in all other respects unless the city determines it is in the public interest to modify the street or road pattern.

**Finding(s):** There is no reason to modify the overall road pattern.

**CONCLUSION & DECISION**

**Based upon the facts and findings herein, the City Planning Commission reverses the administrative decision of PT.1.20 as amended and denies this Partition.**

  
\_\_\_\_\_  
Russell Hubbard, Chairman, Planning Commission

7-6-2020  
Date

# City of St. Helens

## Planning Commission Special Meeting

Approved Minutes

July 1, 2020

**Members Present:** Chair Hubbard  
 Vice Chair Cary  
 Commissioner Cohen  
 Commissioner Semling  
 Commissioner Webster  
 Commissioner Pugsley

**Members Absent:** Commissioner Lawrence

**Staff Present:** City Planner Graichen  
 City Councilor Carlson  
 Community Development Admin Assistant Sullivan

**Others:** Kathleen Ward                      Tracey Hill                      Robin Nunn  
 Patrick Birkle                      Hunter Blashill                      Jeff Seymour  
 Andrew Schlumpberger  
 Ron Schlumpberger  
 Lindsey Schlumberger  
 Tami Schlumpberger

### 1) **Deliberations – Continuation of Appeal AP.1.20 of Partition PT.1.20 at 160 Belton Road – Tracey Hill**

City Planner Graichen asked if there were any ex parte communications. All commissioners said no.

Commissioner Cohen asked for more clarification on the access road. Graichen said access can be reviewed in two different categories: 1. Public, which is usually in a public right-of-way or 2. Access easements. He said the code has standards for each. Graichen said for public right of way, the normal standard is a 50 foot right-of-way width which Belton road has, and a 34 foot road width. That would not have a maximum amount of dwelling units it is allowed to serve. He said there is also a skinny street standard which is a narrower road width of 20 to 26 feet and limited to 200 hundred average daily trips which is approximately 20 detached single-family dwellings. For the private standard, or an access easement, the code says it can be allowed if it is the only reasonable method in which a lot large enough can be created. Graichen said in his decision, he knew the road did not meet any standards now, but if there is a weird situation an alternative standard can be considered. He said he took the private standard and applied it to the public right of way. Commissioner Cohen asked if the road was always considered a continuation of public road. Graichen said Belton Road is a public right-of-way, but the Applicant was proposing a private easement to access parcel two on the south side of the property and on the east side of the property. This would also require them to put in a ten foot wide driveway or per the Fire Marshall, if they require a greater standard. Commissioner Cohen asked if the

applicant ever asked for an easement or variance in the original proposal. Graichen mentioned they had not, but the code did not require them to have a variance to get to the alternate standard for access.

There was another small discussion about the Belton Road continuation and possibilities of Grey Cliffs Drive and how many lots can be developed along those roads.

Commissioner Cohen asked about setbacks for the two parcels and how they would affect the Columbia River and Dalton Lake. Graichen said they did meet the setbacks for both parcels even with their protection zones. Commissioner Cohen asked if this was staff's position that this was a buildable lot safeguarding the wetlands and the protection zone. Graichen said yes.

Commissioner Cohen also asked how much consideration legally the Commission must consider the easement between the neighbors regarding the septic. Graichen said the position that staff took was that the easement was a legal wall to access parcel two. He said validity of the easement was a private matter and that it would have to go away, be reduced so it was not an encumbering to the property, or the applicant would have to find a way around it. Commissioner Cohen asked if they are supposed to deny the partition based on the unresolved easement. Graichen gave the Commission their options for the decision they must decide. He said they could uphold the original decision; they could reverse the original decision, or they can modify the decision adding in some conditions that maybe were not addressed.

There was a small discussion on the easement and how it would need to be resolved before moving forward with the final plat and the partition.

Commissioner Cohen also had a concern with the turnout substitute for the public street. He said the Code did not allow for that. Graichen said if it cannot be accessed normally, then there can be an exception to the standards. He said that is what he did in his original decision. He said it is up to the approval authority on what standards they decide to use. Commissioner Cohen asked about defining the adverse impact in the Code. He was curious how there could be any adverse impact when the applicant knew about the conditions and the difficulty of building a road in the beginning. He did not feel this would be an unexpected occurrence.

There was a small discussion on what road improvements could be applied to the other neighbors in the neighborhood.

Commissioner Pugsley asked about the precedent they were possibly setting for future development and possibly disturbing some Historic burial sites. She was concerned about setting a precedent that would bring more cases to the Commission in the future.

There was a small discussion about historic artifacts and whether a study should be done on this property.

Commissioner Pugsley also asked about the tree plan. Graichen said there were a lot of trees on the property. He said there were provisions the code has for trees. He mentioned the most aggressive provision was for trees that are within sensitive lands and their land buffers. He said on this property there were several in the buffer and they would be protected. He said once they were outside the protective area then they look at replacement requirement. Commissioner Webster mentioned the road access was not to the fire code minimum standard. She was curious how this was not required for the applicant.



There was a small discussion about the drainfield easement and if there were other conditions or concerns to consider without this easement being resolved.

**Motion:** Upon Commissioner Cohen's motion and Vice Chair Cary's second, the Planning Commission unanimously denied the Partition denied based on the drainfield easement prohibiting access to parcel two and being a substantial impact to the development of parcel two. [Ayes: Commissioner Semling, Commissioner Webster, Commissioner Cohen, Commissioner Pugsley, Vice Chair Cary; Nays: None]

**Motion:** Upon Commissioner Webster's motion and Commissioner Semling's second, the Commission unanimously approved the Chair to sign the Findings when prepared. [Ayes: Commissioner Semling, Commissioner Cohen, Commissioner Webster, Commissioner Pugsley, Vice Chair Cary; Nays: None]

## 11) **Adjournment**

*There being no further business before the Planning Commission, the meeting was adjourned 8:44 p.m.*

*Respectfully submitted,*

*Christina Sullivan  
Community Development Administrative Assistant*

# Reeve Kearns PC

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June 30, 2020

St. Helens Planning Commission  
c/o Jacob Graichen, City Planner  
St. Helens City Hall  
265 Strand Street  
St. Helens, OR 97051

**SENT VIA E-MAIL**

## **Re: Appellant's Final Argument – Partition PT.1.20 (Schlumpberger)**

Dear Chair Hubbard and Commissioners:

This is the appellant's final rebuttal in this case, and in it I respond to the primary legal arguments at issue. As a preliminary matter, however, your job in this application is to determine whether the applicant has demonstrated compliance with all of the approval criteria applicable to this 2-lot partition. Those criteria relate to lot size and dimensions, and to the legal access needed to serve the new buildable lot proposed. In your evaluation of those criteria, several legal sideboards apply.

First, you cannot approve this application unless the applicant demonstrates, with credible evidence in the record, that the application meets all of the applicable approval criteria.

Second, conditions that require compliance with future steps are acceptable so long as all of the approval criteria are met or will be met through conditions, and the conditions are either clear and objective, or where subjective criteria are required to fulfill a condition, the City must provide a public process for evaluating compliance with the condition. That said, the City is not required to approve with conditions if the applicant does not demonstrate current compliance with all of the approval criteria. In this case, the application simply is not ready for approval because there are too many requirements that it does not currently meet.

Third, the planning commission cannot approve something that was not applied for. For example, the applicant now says that the substandard access road (Belton Road) can be approved at only 11 feet wide, instead of the 20-foot width the code requires, through the road variance criteria and process in SHMC 17.152.030(5)(b). However, no such variance has been applied for and none of those variance approval criteria have been addressed by anyone to this proceeding. As such, the Planning Commission lacks the legal authority to approve a variance to the 20-foot roadway width standard as part of this partition request.

Fourth, the Planning Commission cannot approve an element of this proposal just because it complies with some unrelated standard. For example, staff suggested that constructing a pull-out on Belton Road would make-up for the lack of a 20-foot roadway width required for local public streets because turn-outs are acceptable mitigation for narrow private driveways. However, Belton Road is not a private driveway, and the public street standards apply and require a 20-foot roadway width. The Code does not allow a turn-out as a substitute for compliance with the minimum public roadway width requirement.

Fifth, even though the City may be legally precluded from imposing a condition that is disproportionate to the impact of the proposed development, failure to meet the standard can and should simply be a basis for denial. When a traffic safety hazard exists and the applicable standard is based on public health and safety, the City should deny the application rather than consider a requiring extremely expensive improvements with a condition of approval. This responds to the applicants' argument that because the cost to widen Belton Road is too expensive, the Planning Commission should simply waive the minimum public street standard. We are not asking for a condition requiring the applicant to widen Belton Road. We are asking the Planning Commission to deny the application because the roadway width deficiency is too dangerous to allow construction of an eleventh home on the road. If you approve an eleventh home on this 11-foot wide public street because the cost of widening it is too expensive for one homeowner to afford, then you must deny the application. Public safety is too important, and the safety hazard of this narrow street too great, to justify approving an eleventh home on Belton Road.

**Existing deficiencies in access to the Schlumpberger property – an 11-foot wide public roadway, is simply unsafe and cannot be approved.**

For most of its length, Belton Road is only 11 feet wide, instead of the 20-foot pavement width required for public local streets by SHMC 17.152.030 and 17.84.070. Moreover, the photographs in the record show how the surrounding vegetation makes the 11-foot roadway appear extremely narrow and obstructs sight distance. The hazards to pedestrians, pets and bicycles in the roadway, as well as entering vehicles is obvious from these photographs and constitutes an existing safety hazard, not just a dimensional deficiency.

The Director's Decision suggested that a turn-out at the 90° bend in Belton Road would be a satisfactory substitute for compliance with the 20-foot pavement width requirement (mitigation), but that is not legal. Turn-outs are satisfactory for private shared driveways, not for public streets. SHMC 17.152.030 and 17.84.070 require at least 20 feet of pavement width for a public "local skinny street," and nothing in the code allows turn-outs as a substitute for code compliance on a public street.

The applicant now suggests that a variance to the street standards allowed by SHMC 17.152.030(5)(b) would allow a substandard pavement width and a turn-out. However, the applicant has not applied for any such variance, and no variance request was mentioned in the notice for this proceeding; therefore, you lack the authority to grant one. Even if that were not the case, no one – not the applicant, not staff, not the Planning Commission – has addressed the

approval criteria for street standard variances in 17.152.030(5)(a), which require consideration of the following:

- (i) The type of road as set forth in Figure 19, Road Standards
- (ii) Anticipated traffic generation;
- (iii) On-street parking needs;
- (iv) Sidewalk and bikeway requirements;
- (v) Requirements for placement of utilities;
- (vi) Street lighting;
- (vii) Drainage and slope impacts;
- (viii) Street tree location;
- (ix) Planting and landscape areas;
- (x) Safety for motorists, bicyclists, and pedestrians; and
- (xi) Access needs for emergency vehicles;

The emphasized factors are particular important in this case because Belton Road is so extraordinarily narrow and sight distance limited. The local Fire District chief stated that his vehicles could get through if needed, and the new home would have fire suppression sprinklers. However, the obvious safety hazard for pedestrians, pets and bicycles still exists, and most fire district calls are for medical emergencies. Fire suppression sprinklers do not help medical emergencies. Because there has been no variance application, and no one has addressed the variance criteria, the Planning Commission cannot approve a variance. Belton Road simply does not meet the 20-foot width standard, and its current condition constitutes a public safety hazard that precludes the addition of an eleventh house on the street.

The applicant suggests that to require an up-grade to Belton Road to a full 20-foot width would be disproportionately expensive and an unconstitutional condition. That may be so, and that is why denial is the only lawful option unless or until the applicant applies for and obtains a variance or Belton Road's deficiency is corrected through an LID (local improvement district) or some other means. The key Oregon takings case that the applicants fail to cite is *Hill v. City of Portland*, 293 Or App 283, 428 P3d 986 (2018), in which the Court of Appeals invalidated a permit that Portland approved with a disproportionately expensive condition of approval. The Court held that, to pass muster with the Fifth and Fourteenth Amendment takings prohibitions, there must be a rational nexus between the code basis and the condition imposed so that, if the condition is not met, the project can be denied. Thus, the Court of Appeals expressly acknowledged that denial must be an option when a code requirement is not met.

In the *Hill* case, instead of denying the proposal, Portland approved it with an unlawful condition. In the present case, the Planning Commission must deny this proposal because the cost of this one applicant bringing Belton Road up to city standards is likely too expensive and not constitutional. The Director's decision on this point is not consistent with the Code and will endanger public safety by adding an eleventh house to a road only 11 feet wide. Likewise, the applicant's suggested solution of ignoring Belton road's unsafe condition by adding yet another house to it, is also not consistent with the code. Because Belton Road is unsafe, non-compliant and too narrow, and the cost of making it compliant too expensive, denial is the only lawful option.

**Proposed Parcel 2 lacks legal access because of Tracey Hill's septic drainfield easement.**

Aside from whether Belton Road can lawfully support one more dwelling, proposed Parcel 2 lacks legal access altogether. The presence of Ms. Hill's recorded septic drainfield easement precludes the proposed access and development site for a home on Parcel 2. The drainfield easement is a legal reality because it is written and recorded with title to the applicant's property, and it was never rescinded or extinguished. Contrary to their testimony, the applicants never approached Ms. Hill to discuss why she wanted her drainfield easement and what would be a suitable substitute for it. That is a shocking contradiction to the story of neighborhood harmony that the applicants testified about at the hearing.

The applicants' lawyer now promises a quick lawsuit to extinguish Ms. Hill's easement and quiet title for full fee simple in the applicants. This promise is not realistic, nor is it an honest assessment of the outcome.

First, the easement was duly signed and recorded by the applicants' predecessor, and it has never been extinguished or relinquished. They claim that the prior owners meant to abandon and extinguish the drainfield easement, but the fact that none of the parties recorded an extinguishment, most notably the Sorensens, is strong evidence that no one intended to abandon or extinguish the easement. Clearly, everyone in 1990 intended to connect both homes to public sewer on the other side of the Elks Lodge via a pressurized STEP system. Clearly, the old septic tanks were decommissioned and abandoned as part of connecting to the STEP system. But there is no evidence of any intent to permanently abandon or extinguish the drainfield easement. Instead, there is clear evidence of a desire and intent to retain the drainfield easement just in case these properties ever had to revert back to an on-site septic system. That would only happen if the local STEP system failed and there was no economical means to repair or replace it. If that were to happen, reestablishment of the septic drainfield is the only economical way to maintain habitability of Ms. Hill's house.

Granted, reestablishment and reinstallation of a septic drainfield would not be easy or inexpensive, but it would be less expensive than the cost of many possible repair or replacement scenarios should the STEP system fail. The applicants' statement that "[t]here is absolutely no way Appellant will ever be allowed to build a new onsite septic system on Applicants' property" is simply wrong. If the STEP system fails and requires an extremely expensive replacement cost, yes, it will be difficult, time-consuming and expensive to permit and construct a new on-site septic system. Trees would have to be removed and new drainpipe installed, but that would be less expensive than many scenarios for constructing a new STEP system. If the STEP system were to fail, Ms. Hill's property is farther than 160 feet from the conventional public sewer, located on the other side of the Elks Lodge driveway. Consequently, if the STEP system were to fail, SHMC 13.14.060 would not prohibit her on-site septic system nor require connection to city sewer. Likewise, if the STEP system were to fail, Ms. Hill's property would be farther than 300 feet from the conventional public sewer, and OAR 340-071-0185 would not prohibit on-site septic nor require connection to city sewer. After all, the city code did not require the construction of the STEP system and connection to city sewer in 1990. The property owners did



it voluntarily because the City paid the cost of construction, which may not happen a second time. The applicants' assertions that reestablishment of an on-site septic system is impossible or legally prohibited are simply wrong – reestablishment, depending on the circumstances, would be legally permissible and economical.

When she purchased her property, Ms. Hill was aware of the septic drainfield easement; she realized its importance as an insurance policy in the event of a catastrophic failure of the pressurized, small pipe diameter STEP system, and hoped that she would never have to reinstall her septic system. However, she knew that the recorded drainfield easement guaranteed her that option if the worst were to happen.

Given these facts, the applicant's rosy predictions of a quick quiet title action are not reliable. First, to prove that an easement has been abandoned, the party alleging abandonment must show, by clear and convincing evidence, that the easement holder "expressed or manifested an intent to make no further use of the easement." *Shields v. Villareal*, 177 Or App 687, 691, 694, 33 P3d 1032 (2001). The clear and convincing standard requires proof that is "free from confusion, fully intelligible, distinct" and that establishes that the truth of the asserted fact is "highly probable." *Shields v. Villareal*, Id at 693-94, citing *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 407, 737 P2d 595 (1987). Thus, the applicants will have an extremely demanding burden of proof – something their earlier lawyer (Haley Borton) did not even mention, much less address.

Second, the only factor present in this case to support abandonment is non-use, which the court's have expressly rejected as being not enough to prove abandonment. Nonuse of an easement, by itself, does not establish that an easement has been abandoned. *Conner v. Lucas*, 141 Or App 531, 538, 920 P2d 171 (1996). Granted, the owners of both properties in 1990 agreed to connect their homes to a public pressurized STEP system, which entailed abandonment of their septic tanks. That much is not contested, but both kept the drainfield in place, and Ms. Hill's predecessor (Art Johnston) retained the recorded easement. Evidence that the then-owners wanted to connect to public sewer via the STEP system is not evidence that they never wanted the option to someday be able to restore the on-site septic system should the STEP system fail. STEP system failure would be extremely expensive to repair or replace, and SHMC 13.14.060(5) allows the City to place the entire cost burden of connecting to public sewer through a STEP system on the private property owner(s). Ms. Hill could not afford this, nor could most people, and that is why she relied on the insurance policy represented by the recorded drainfield easement.

Third, the applicants provided a hand-written letter from their predecessor (Ron Sorenson) stating that he meant to abandon the old septic system by filling the tank in place and disconnecting the drainfield, without extinguishing or rescinding the recorded drainfield easement. Ms. Hill does not contest that her predecessor (Art Johnston) meant to connect to a new STEP system, abandon and decommission his septic tank, and disconnect the drainfield. That much is shown in the record. What Mr. Sorenson does not say in his letter is that anyone meant to abandon the septic drainfield forever and for all reasons. The septic tank did not depend upon an easement on the neighbor's property; the drainfield did, and Mr. Sorenson does

not say there was any intention to abandon or never reestablish the drainfield within its recorded drainfield easement. The septic tank and the drainfield easement on the applicants' property are two very different things. One (the tank) was abandoned by filling it with sand; the other (drainfield) was simply disconnected. The drainfield was not used, and the recorded easement remained in place and of record. As the first attorney, Haley Burton, characterized the holding in *Shields v. Villareal*, "Abandonment occurs if there is evidence of an intent to permanently abandon the easement." "Permanent" is a long time, and all the evidence shows about the drainfield is non-use, which is not sufficient to prove an intent to permanently abandon by clear and convincing evidence. Mr. Sorenson's letter simply does not say what the applicants' claim it says.

Finally, Mr. Sorenson was not the holder of the drainfield easement; rather, his property was burdened by it. It would be a different matter if there was evidence that the holder of the easement (Art Johnston) expressed an intention to abandon forever use of the drainfield easement. Consequently, Mr. Sorenson is not a credible witness as to whether the holder of the drainfield easement meant to permanently abandon it. Mr. Sorenson, like the applicants, was and is motivated to eliminate this encumbrance held by Ms. Hill. Neither is a credible witness as to what the original holder of the easement intended to do.

A final point is worth mentioning. The applicants claim that Ms. Hill's drainfield easement is far larger than needed to serve a single-family dwelling septic system and that she unreasonably won't let the applicant's reduce it in size. It may be true that the easement is too large; that would not be surprising. However, Ms. Hill is not willing to accept the applicants' unqualified estimation of how much space and what type of soil is sufficient to serve as a septic drainfield. As already mentioned, the applicants have lost all credibility with Ms. Hill, and she is not willing to accept their word on these matters without a suitably qualified septic system installer's certification of what is needed. The applicants refused to provide any certification by a qualified engineer or contractor. In that light, Ms. Hill's rejection of the applicants' offer is not unreasonable, but fully justified.

## **Conclusion.**

It is unfortunate that this 2-lot partition is contested. Ms. Hill never wanted this dispute, which could have been avoided if the applicant's had simply talked to her at the onset. At this point, however, the applicants have lost all credibility with Ms. Hill, and she is unwilling to take them at their lawyer's word about settling this dispute. As the record currently stands, it does not demonstrate that Belton Road meets City Code standards, nor has a variance to those standards been requested or approved. The record does not contain clear and convincing evidence of an intent by the holder of the septic drainfield easement to permanently abandon the easement and never reestablish the drainfield. For those two simple reasons, the Planning Commission must deny the partition application.

What this contested proceeding has really shown is that the Schlumpberger parcel is simply too small, too oddly shaped, and too constrained to develop with a second home given the riparian areas, wetlands, floodplains, Ms. Hill's recorded drainfield easement, safety deficiencies

Reeve Kearns P.C.

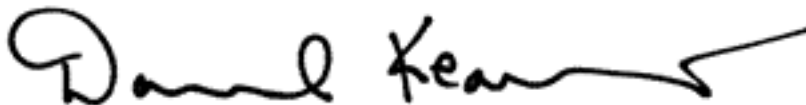
June 30, 2020

Page 7

of Belton Road, and the lack of legal access. Full compliance with the City's regulations is required before the Planning Commission can approve the partition. The applicants, while nice people, have not carried their burden of proof, and the Planning Commission is not obligated to provide them a financial windfall by bending the City's rules.

Prior to purchasing her property, Ms. Hill did extensive research on her property and the City zoning and development standards that protect it. Through that due diligence, she knew about all of the encumbrances of record, such as the drainfield easement on the Schlumpbergers' property, that protected her new house and ensured there would be no incompatible development. The Planning Commission cannot and should not assist the applicants in eliminating those protections by approving this partition. Given the evidence in the record (or lack thereof), and the conditions on the ground, this application is not ready for approval and must be denied.

Sincerely,

A handwritten signature in black ink that reads "Daniel Kearns". The signature is fluid and cursive, with a long horizontal stroke at the end.

Daniel Kearns

cc: Client  
Jeffrey Seymour, Esq.

**JEFFREY S. SEYMOUR**  
**ATTORNEY AT LAW**

Item 1.

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PORTLAND, OR 97239  
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E-MAIL jeffseymour1@earthlink.net

*Via email only*

June 30, 2020

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

Attn: Jacob Graichen, Planning Director

Subj: Partition PT.1.20 (Schlumpberger); applicants' additional evidence

Jacob:

In consideration of all of the evidence submitted in this land use process, Applicant's submit the following closing argument. It will address the three substantive areas of appeal, and one more generalized area:

1. Septic Easement
2. Belton Road Width
3. Vegetation and Tree Plan
4. General Neighbor Comments

1. Septic Easement

In his Amended Decision, the Planning Director conditioned his partition approval on the removal of the recorded septic easement on Applicants' property.

Appellant claims that she needs a septic easement on Applicants' property as an "insurance policy" in case the city's public sewer system fails. This is a unfounded claim, and just a cover up for Appellant not wanting another house in the area. She will never be able to use an onsite septic system on Applicants' property.

Columbia County issues septic permits for residents of St Helens. An email in the record from county environmentalist Erin O'Connell states that "when a septic system fails, it is required to be connected" to city sewer. In emails in the record, Sue Nelson, the city's Public Works Director states that the city maintains the STEP system, and that if a property is within 160' of the public sewer, it must be hooked up.

State rule OAR 340-071-0160(4)(f) , which is implemented by the county, provides that an onsite septic permit must be denied if a public sewer system is physically and legally available. OAR 340-071-0185(1)(a) provides that a property owner must decommission an onsite septic system "when a sewerage system becomes available and the facility the system serves has been connected to that sewerage system."

Finally, SHMC 13.14.060 requires property within 160' of city sewer to connect to that sewer, and SHMC 13.14.070 only allows onsite treatment if no public sewer is available.

In a letter dated March 8, 2020 from Richard Sorenson, included in the record, he explained that he, Tracey Hill's predecessor Art Johnston and 3<sup>rd</sup> neighbor Steve Edney hooked up their on-site septic systems to St Helens public sewer in the early to mid-1990s. In his letter, Mr. Sorenson said:

"All former septic systems were abandoned by filling old tanks with sand, disconnected old drain fields and installed new concrete holding tanks that pumped to the city sewer. All old drain fields are obsolete, not in use and dried up. Art Johnston had an easement to my property and signed off on that easement at the time of hooking up to the city sewer."

Appellant's and Applicants' predecessors destroyed the drain field, and then abandoned the easement on Applicants' property at least 25 years ago. There is absolutely no way Appellant will ever be allowed to build a new onsite septic system on Applicants' property. Furthermore, evidence in the record states that it takes about 4 months to get a new onsite system permitted and built. If the city STEP system were to fail, the city would repair it within days. Appellant's argument that an onsite septic system on Applicants' property is a valid "insurance policy" against the failure of the city sewer is not supported by either the facts or the law. It is a frivolous claim.

The easement on Applicants' property is much larger than needed for a new drain field. Applicants proposed a reduced size easement to Appellant that would accommodate a new drain field and, at the same time, provide enough room for the access driveway to parcel #2. Applicants offered this to appellant in lieu of filing their lawsuit against her to quiet title to the easement and remove it. She refused this offer, so Applicants will be filing suit shortly.

Applicants request the Planning Commission deny this part of Appellant's appeal, and allow them to meet this condition of approval within the statutory time period.

## 2. Belton Road Width

In his Amended Decision, the Planning Director conditioned his approval on adding a 24' x 30' turnout at the 90 degree curve on Belton Road. Evidence in the record supports the Planning Director's condition that a 24' x 30' turnout on Belton Road will provide needed safety to allow the partition.

Belton road is one of many narrow roads in St Helens. The nearby bedrock, wetlands, steep slopes and dense mature trees create many topographical constraints that would be adversely impacted if Belton road was widened to meet street standards.

SHMC 17.152.030(4)(b)(i) allows the road plan to "Conform to a plan adopted by the commission, if it is impractical to conform to existing street patterns because of particular topographical or other existing conditions of the land." SHMC 17.152.030(5)(b) allows the Planning Commission to



deviate from the road width standards if it “determines that the standards will result in an unacceptable adverse impact on existing development or on the proposed development or on natural features such as wetlands, steep slopes or existing mature trees.

In this particular situation, the Planning Commission has authority to deviate from the adopted street codes.

A separate consideration with Belton Road is the cost of bringing it up to code standards. Evidence in the record shows an estimate of \$181,300 for the road widening excluding any costs for blasting and excavation of the basalt rock in the area. This cost could double the initial estimate, sending the total price to well over \$300,000.

A case discussing this is *Schulz vs City of Grants Pass*, 884 P.2d 569, 131 Or App 220 (1996). Grants Pass conditioned a partition application on, among other things dedicating 20,000 square feet of property to the city in front of the property, for road improvements. The city required the applicant to absorb 50% of the cost of the improvements. The applicant filed suit for a Writ of Review, and the trial court upheld the city’s conditions.

The Court of Appeals reversed the trial court and remanded the case to the trial court to make rulings consistent with the Court of Appeals decision. The court looked at 2 elements to determine if a taking occurred under Article 5 of the Constitution – the government’s interest in the condition, and whether the condition denies the owner the economically viable use of his land. The court cited *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), stating at page 226:

“The [Dolan] Court then articulated the following test for determining whether the exaction of a condition is constitutional:

‘[W]e must first determine whether the 'essential nexus' exists between the 'legitimate state interest' and the permit condition exacted by the city. If we find that a nexus exists, we must then decide the required degree of connection between the exactions and the projected impact of the proposed development.’ 512 U.S. at ---, 114 S.Ct. at 2317. (Citation omitted.)”

The *Schultz* court reversed the trial court and held the land dedication condition an unconstitutional taking. The court held:

“There is, in short, nothing in the record that provides evidence of a relationship between the conditions the city has imposed and the impact of petitioners' proposed development. The trial court erred, as a matter of law, in concluding otherwise.”

This case is still good law.

In this partition appeal, there is nothing in the record indicating the condition requiring a 24' x 30' turnout is not a sufficient measure to keep Belton Road safe. In a letter from Capt. Gorsuch, Columbia River Fire and Rescue, he cited no safety problems with adding another residence to Belton Road, and stated fire and rescue vehicles had access to all the properties. Similarly, Jeff Pricher, Columbia River Fire and Rescue Marshall's division chief had no problems with the Belton Road width.

The estimated \$300,000+ cost to improve Belton Road to code standards is grossly disproportionate to the impact of adding only one additional single family residence on Belton Road. If this is required, it amounts to a constitutional taking under the 5<sup>th</sup> Amendment. This cost would virtually wipe out any economically viable use of their property. The 24' x 30' turnout is a sufficient condition to improve the safety of the road without the need for widening to city code standards.

Applicants request the Planning Commission deny this part of Appellant's appeal, and allow them to meet this condition of approval within the statutory time period.

### 3. Vegetation and Tree Plan

This is the most straightforward of the substantive issues. Applicants have submitted a Tree Plan that they believe complies with the city code requirements. In late 2019, Applicants received a warning notice from the city about removing vegetation on the property. There have been no further issues. Applicants have stayed in close contact with the City Planner and addressed all of his concerns. They have submitted a tree plan that complies with the city code requirements. If the Planning Commission determines it is not sufficient, it can be amended to meet all code requirements.

While the neighbors have indicated they would like to keep all the vegetation untouched, that is not what the code requires, and not the standard the Applicants should be held to.

Applicants request the Planning Commission deny this part of Appellant's appeal, and allow them to meet this condition of approval within the statutory time period.

### 4. General Neighbor Comments

Several neighbors have submitted letters stating that they would rather not have another residence in the area. It's the old NIMBY argument – Not In My Back Yard. Some of them spoke to the condition of the neighborhood decades ago, and did not want to see anymore development. They wrote about wildlife and trees and unobstructed views, and how one more residence would ruin all of the natural beauty. However, Applicants are designing the new parcel to minimize the impact of another house, and will do so within the confines of the laws. Just because the neighbors would rather not have another residence near them is not sufficient justification for denying a partition application that otherwise complies with the law and approval conditions.

Applicants have been subjected to hurtful and exhausting attacks on them by Appellant. She has repeatedly made unfounded claims that Applicants misrepresented the roadway with photos, sprayed pesticides on vegetation, and have been dishonest. These are false.

Before submitting their partition application, Applicants met with neighbors to work out acceptable plans to keep the area peaceful and private. Kathleen Ward and Robin Nunn both approved of their partition. They worked with Kathleen Ward to plan a barrier for privacy along the new access driveway.

Andrew and Lindsay Schlumpberger are both honest, high integrity people, and have worked with the neighbors and city to produce a good partition plan. Their partition plans comply with city code, and all development and construction work will be done according to law.

They request the Planning Commission deny the appeal in its entirety, and allow the Planning Director's Amended Decision to stand as is.

Sincerely,

*Jeffrey S. Seymour*  
Jeffrey S. Seymour

Tracey A. Hill  
250 Belton Road  
St. Helens, OR 97051

RECEIVED  
JUN 23 2020  
CITY OF ST. HELENS

June 23, 2020

Re: Schlumpberger Partition, PT.1.20 – Appellant's Rebuttal Comments

Dear Planning Commission:

Again, thank you for your careful consideration of the documents submitted to you to date regarding this proposed partition.

Following is my rebuttal to the material submitted to you in applicant's additional evidence letter dated June 15, 2020:

**Communication with the Schlumpbergers:**

The evening of June 18<sup>th</sup> I walked my dog up Belton Road and ran into Andrew Schlumpberger and his son in the middle of the road near their driveway. We exchanged pleasantries; nothing was said about this matter.

The morning of June 20<sup>th</sup> Lindsay Schlumpberger knocked on my front door. As we stood in my entryway, she asked me "what are your plans for the easement...what are you going to do with it?" I responded that I hope I never have to use it, but if the STEP system goes down, that's my insurance policy for habitability of my home. I added that the easement serves the dual purpose of protecting the surrounding environment. She then asked, "what about reducing the easement?" I stated that I was not a sanitary engineer. I also detailed the actions I took to research the easement, the property's history, the sewage disposal (STEP) system and local codes before I completed escrow on my house. I reiterated how important the easement was to me and that it was a major reason why I finally decided to buy my home. I also told her that the actions they took almost immediately after moving in were shocking to the neighbors who, for so many years, have cherished and protected our wild surroundings and the ecosystem that depends on it. Her response was "but you live on the lake." There was no mention of trying to work out the easement issue. There was no additional talk about the easement at all.

**Applicant's misrepresentations in their 07/15/20 "additional evidence" letter:**

**"Evidence supporting a skinny street":**

The points and assertions made here are wholesale misrepresentations. Nearly all of the photos were mislabeled as to location – for what reason I do not know. Instead of submitting photographs I've taken disputing nearly all of the representations made by applicants in this section, I would ask you to simply refer to the Administrator's Limited Land Use Decision (Amended), p. 5, last paragraph. The City Planner measured Belton Road. It has no outlet. The first approximate 500 feet from the Elks Lodge down is "a pavement width of approximately 17 feet, thereafter the width is around 11' in most places." The staff findings are accurate regarding the width of Belton Road.

Belton Road is very narrow, long, and has severely constrained visibility. There are 10 houses on this road now. When is one more, plus additional construction and other traffic one more too many? A hairpin turn begins immediately north of applicant's property. It is not possible to see traffic approaching the curve from the opposite direction. The only purpose a turnout will serve is to allow a tow truck room to pick up a totaled vehicle, or an ambulance to get around a wreck to pull a child out from under a car. There is no other practical benefit to simply requiring a turnout as a condition to approval of applicant's petition.

**"Evidence that we are protecting and preserving nature":**

The photo submitted to you in my 06/17/20 response and labeled "12/06/19" (attached here as Exhibit 1 for your convenience) is illustrative of the leaf death of the Himalayan blackberries a couple days after Andrew Schlumpberger applied spray over that area. This photo is taken from the lower deck of my house facing east. Applicants' Additional Evidence presents a photograph on p. 15 that grossly misrepresents the area where Mr. Schlumpberger applied spray. This is evidenced by applicants' photo on p. 19 of their document. (Both photos are attached as Exhibits 2 and 3 to this letter for your reference.) Exhibit 1 is actually taken from the southern shore of Lake Dalton facing north up the protected land belonging to Kathleen Ward. Exhibit 2 depicts where the blackberry death occurred but is clearly a completely different area.

Why does this matter? It matters because misrepresentations of the roadway are another attempt that applicants have made to try and get their partition approved. It matters because they have proven beyond any doubt that they will continue to act *without permission or approval* outside of the codes and laws in favor of what they want.

**Easement:**



My septic drainfield easement exists. It is recorded, is valid and is enforceable. There is no argument about this. There is also no argument that the STEP sewer system is not guaranteed and is subject to relatively high maintenance and failure when compared to a City sewer. We cannot get City sewer down here, so we have a STEP system.

1. My easement is my insurance policy against forfeiting habitability of my home in the event of a STEP system failure or fault in the City sewer. As I have previously stated, I did an exhaustive amount of due diligence prior to purchasing my property.

Following the hearing, applicants proposed a reduction of my drainfield. It was not prepared by a sanitary engineer and no documentation exists even addressing sufficiency of a reduction of easement.

2. My easement serves the important dual purpose of eliminating further development, thus protecting the surrounding environment, as well as protecting my view and that of several my neighbors.

In conclusion, the applicants have flagrantly misrepresented the insufficient roadway in their photographs. The Administrator's Limited Land Use Decision reflects accurate measurements of Belton Road. This matters a great deal – it keeps pointing us back to the misrepresentations made by the applicants throughout this process. The applicants have disregarded the codes and laws that specifically protect our environment from damage. They continued to take actions that were detrimental to the ecosystem and wildlife on the riparian areas and sensitive lands. And they completely disregard my easement as being invalid or of nuisance value – an easement that I acquired with the purchase of my home – an easement that is my insurance policy and also protects the environment around us. The easement matters. It matters very much. And it is a show-stopper for this proposal.

Respectfully Submitted,

*Tracey A. Hill*

Tracey A. Hill

/tah  
Attachments







**View from beach towards Dalton  
Lake illustrating large overgrowth of  
blackberries and grass.**

**(Region where appellant claimed  
pesticides were used)**





After blackberries trimmed with  
hand trimmer



**JEFFREY S. SEYMOUR**  
**ATTORNEY AT LAW**

Item 1.

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E-MAIL jeffseymour1@earthlink.net

*Via email only*

June 23, 2020

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

**RECEIVED**  
**JUN 23 2020**  
**CITY OF ST. HELENS**

Attn: Jacob Graichen, Planning Director

Subj: Partition PT.1.20 (Schlumpberger); applicants' additional evidence

Jacob:

In response to the additional evidence submitted for the record by the hearing participants, my clients are submitting 3 additional documents. They are:

1. Email from M E. Moore Construction, Inc., 36054 Construction Way, St Helens, OR. This is a 40 year old septic contracting company familiar with the septic system approval and installation process in the area. Appellant claims the septic drain field easement on Applicant's property is "insurance" in case the city public sewer fails. This is a specious claim. The Moore email shows that permitting and installing a septic system on Applicant's property is a 4 month process. Moore believes the county would not issue a permit for it. Any public sewer repairs would be completed in a short time compared with the 4 months needed for a new septic system.

2. Email from Ron Schlumpberger discussing the issues with widening Belton Road to meet city code. The bid from Triton, previously submitted, is for \$181,300 for the work. It specifically excludes rock blasting and excavation. This area in Belton Road is made up of Columbia River basalt, which is extremely difficult to excavate. In Ron's experience and work with contractors, the rock blasting and excavation could double the initial \$181,300 price.

3. Applicants' detailed narrative statement and exhibits supporting their position that the Partition should be approved with the conditions determined by the Planning Director. It refutes the additional evidence submitted by Appellant and opposing participants. It addresses the 3 areas at issue on appeal – the septic easement, the vegetation and tree plan, and the width of Belton Road.

Thank you for providing this to the Planning Commission members. Per your direction, we will provide final arguments by next Tuesday, June 30<sup>th</sup>.

Sincerely,

*Jeffrey S. Seymour*  
Jeffrey S. Seymour

Enclosures



**From:** Schlumpberger, Ron <ron.schlumpberger@nfp.com>  
**Sent:** Tuesday, June 23, 2020 2:37 PM  
**To:** Jeffrey Seymour  
**Cc:** Andrew Schlumpberger  
**Subject:** FW: Septic Process

---

**From:** Schlumpberger, Ron  
**Sent:** Monday, June 22, 2020 4:59 PM  
**To:** Jeffrey Seymour <[jeffseymour1@earthlink.net](mailto:jeffseymour1@earthlink.net)>  
**Cc:** Andrew Schlumpberger <[andrewschlumpberger@gmail.com](mailto:andrewschlumpberger@gmail.com)>; Lindsay Mcdonough <[lmcdonough91@gmail.com](mailto:lmcdonough91@gmail.com)>  
**Subject:** Fwd: Septic Process

Sent from my iPhone

Begin forwarded message:

**From:** "M. E. Moore Const." <[memoooreconst@msn.com](mailto:memoooreconst@msn.com)>  
**Date:** June 22, 2020 at 4:40:24 PM PDT  
**To:** "Schlumpberger, Ron" <[ron.schlumpberger@nfp.com](mailto:ron.schlumpberger@nfp.com)>  
**Subject:** Septic Process

ATTENTION - EXTERNAL EMAIL - The sender of this email is EXTERNAL to our email system. Do not click links or open attachments unless you recognize the sender and know the content is safe. The Original Sender of this email is The Original Sender of this email is [memoooreconst@msn.com](mailto:memoooreconst@msn.com)

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Good Afternoon Ron,

In regards to your questions on how long the process takes from initial contact to having a system installed it generally takes about 4 months.

We allow 12 weeks for the lot evaluation process. Test holes need to be excavated, the inspector has to look at them, and the report needs to be issued. The report has the specifications of the system along with what area is approved to put the septic on. After the report is issued grades need to be shot in order to draw up the proposed plan/materials list and submit to the county for the installation permit.

After the proposed plan is approved the county will issue an installation permit and you can proceed to construction.

Most systems can be constructed in one week, there are a few that take a bit longer.

I do want to let you know that if a sewer connection is available within 300' of the property (not the house) that is grounds for permit denial based on Oregon Onsite Wastewater Treatment System Rules, I have provided that section of the rules for you, please see highlighted area below.

All onsite wastewater treatment in the State of Oregon is governed by and permitted by these rules. The City of St. Helens may have a different footage requirement for hooking up to sewer than the state does, but the system would not be permitted under the state rules, the City of St. Helens has no agent to permit or inspect a septic system.

#### [340-071-0160](#)

#### **Permit Application Procedures — Construction, Installation, Alteration, and Repair Permits**

(1) Permittees. A permit to construct a system may be issued under this rule only to the owner of the real property that the system will serve.

(2) Application. A completed application for a construction, installation, alteration, or repair permit must be submitted to the appropriate agent on approved forms with all required exhibits and the applicable permit application fee in OAR 340-071-0140(3). Applications that do not comply with this section will not be accepted for filing. Except as otherwise allowed in this division, the exhibits must include:

(a) A site evaluation report approving the site for the type and quantity of waste to be disposed. Agents may waive the requirement for the report and fee for applications for repair or alteration permits.

(b) A land use compatibility statement from the appropriate land use authority as required in OAR chapter 340, division 018.

(c) Plans and specifications for the onsite system proposed for installation within the area the agent identified and approved in a site evaluation report. The agent must determine and request the minimum level of detail necessary to insure proper system construction.

(d) Any other information the agent determines is necessary to complete the permit application.

(3) Deadlines for action. The agent must either issue or deny the permit within 20 days after receiving the completed application unless weather conditions or distance and unavailability of transportation prevent the agent from timely action. The agent must notify the applicant in writing of any delay and the reason for delay and must either issue or deny the permit within 60 days after the mailing date of notification.

#### **(4) Permit denial. The agent must deny a permit if any of the following occurs:**

(a) The application contains false information.

(b) The agent wrongfully received the application.

(c) The proposed system would not comply with applicable requirements in this division or in OAR chapter 340, division 073.

(d) The proposed system, if constructed, would violate a commission moratorium under OAR 340-071-0460.

(e) The proposed system location is encumbered as described in OAR 340-071-0130(8).

(f) A sewerage system that can serve the proposed sewage flow is both legally and physically available, as described in paragraphs (A) and (B) of this subsection.

(A) Physical availability. A sewerage system is considered available if topographic or man-made features do not make connection physically impractical and one of the following applies:

(i) For a single family dwelling or other establishment with a maximum projected daily sewage flow not exceeding 899 gallons, the nearest sewerage connection point from the property to be served is within 300 feet.

(ii) For a proposed subdivision or group of two to five single family dwellings or other establishment with the equivalent projected daily sewage flow, the nearest sewerage connection point from the property to be served is not further than 200 feet multiplied by the number of dwellings or dwelling equivalents.

(iii) For proposed subdivisions or other developments with more than five single family dwellings or equivalent flows, the agent will determine sewerage availability.

If you have any other questions feel free to reach out.

Have a great day!

Sabrina Moore  
Secretary  
M. E. Moore Const., Inc,

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**From:** Schlumpberger, Ron <ron.schlumpberger@nfp.com>  
**Sent:** Monday, June 22, 2020 10:46 AM  
**To:** Jeffrey Seymour  
**Cc:** Andrew Schlumpberger; Lindsay Mcdonough  
**Subject:** Rock Clause for excavation work

Jeff,

The majority of excavation work in St. Helens will include a "rock clause" otherwise it is a crap shot how hard, and how much rock you hit on any specific job. Belton Rd is already pushed to one side of the "right of way" in areas to help alleviate some of the hammering or blasting that took place to put the original roadway in. I insure many of the local excavation companies here in town, and all of them will tell you how hard it can be not only the digging, but the disruption to defend against other issues with neighbors complaining about their basements or foundations cracking as a result of the hammering. Just look how long they've been hammering out at the new middle school, where that same basalt rock is prevalent. Any bid can easily double once the final costs come in for the time and material it takes to finish a job.

### Ron Schlumpberger

Vice President, CPCU

#### Property & Casualty Insurance

61 Plaza Square | St. Helens, OR 97051

P: 503.397.0714 | F: 503.397.0674 | [ron.schlumpberger@nfp.com](mailto:ron.schlumpberger@nfp.com) | nfp.com

Certificate requests should be emailed to [nfpprcertrequest@nfp.com](mailto:nfpprcertrequest@nfp.com)



*Insurance services provided through NFP Property & Casualty Services, Inc. a subsidiary of NFP Corp. (NFP). In California, insurance services are provided by NFP Property & Casualty Insurance Services, Inc. License #0F15715.*

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### **Applicant's Response to Post-Hearing Written Evidence**

The applicants, Andrew and Lindsay Schlumpberger, thank you for your review of this matter and for creating an additional meeting on July 1<sup>st</sup> to accommodate what has already been a long and very stressful waiting period. My husband and I are both frontline healthcare workers and this year has been beyond the toughest year of our 9+ year careers.

In the beginning of this journey of buying this home and partitioning this property we never imagined things would have come to the point they are today. The division and tension this has created is not something we set out to create. We simply bought a home on a beautiful piece of property and began dreaming of building our dream home. My husband was born and raised in this area and over the last 3 years we built our family in this community. We work here and support the people here. We have no intention of disrupting the peace, we only ask to be given the same opportunity as others have, and to build a home, raise our family and enjoy the peace and beauty of the surrounding area.

This partition has been reviewed by your staff and has been approved once and then amended with conditions. We ask you to uphold this approved ruling as we agree to meet the requirements or conditions laid out by the city and their amended decision. The amended decision on April 15<sup>th</sup> brought forward three conditions, a formal tree plan, city road standards and a cumbersome easement. The first condition has been satisfied with a submitted tree plan completed by Dave Reynolds surveying, the following two conditions are supported by St Helens municipal codes 17.152.030(5b) and 13.14.060. St Helens municipal code 17.152.030 (5b) defines an exception to standard road codes for St Helens based on topographical constraints that result in adverse impacts on the surrounding land. These constraints are the sole reason Belton road has remained a narrow road. The addition of added turnouts will improve the road without adversely impacting the surrounding land and will greatly increase the roads safety. St Helens municipal code 13.14.060, defines an old wastewater system to be abandoned and decommissioned when disconnected and switched over to city sewer. An abandonment of the system is an abandonment of the easement as its sole purpose is to meet the need of the wastewater system in its time of use.



### **Wetland protection zones and Tree plan**

The wetlands have been a topic of much discussion, therefore I wanted to clarify a few points. Parcel two is in close proximity to both D-16 and D-17 wetlands, both wetlands have a 75 foot protection zone surrounding them. Any maintenance or contact with these zones is regulated by Saint Helens municipal code 17.40. A topic of concern that arose from the appellant regarding these zones is the removal of what was said to be native plants within the protection zones. No native plants were in fact removed. The plant that was removed is Himalayan black berries. Both D-16 and D-17 have an abundance of Himalayan blackberries that extend onto the beach and to the surrounding properties. This was confirmed by Staci Benjamin, the wetland specialist who surveyed the surrounding wetlands and identified the blackberries in her notes. Himalayan blackberries are defined by Saint Helens municipal code 17.40 as “noxious invasive and/or nonnative vegetation”. Noxious vegetation control is then further defined in 17.40.035 as exempt, with removal of “nonnative vegetation with electric or handheld equipment” allowed without a permit. Please note, the only removal of Himalayan blackberries that took place within the protection zone was to mark a pathway for our property surveyor Dave Reynolds, as we discussed in the meeting on June 9th. The remaining blackberries were removed outside the protection zones as illustrated in the photos provided. As seen in the photos, a tractor was used to gather the blackberries outside both protection zones, a permit is not indicated for such use as it was outside the protection barrier.

Another concern that arose on the June 9<sup>th</sup> meeting was tree removal. It was claimed by the appellant that the trees that were removed, prior to final partition approval, were within the 75 foot protection zone. This is not true. The maple trees that were removed were all well outside the protection zone and are identified on both our submitted tree plan and the provided photos.

It has been suggested that we the applicant have repeatedly ‘acted without permission and asked for forgiveness later’. This is not the case. Below you will see we have done our best to act within regulations while also maintaining our property and home. Early December we the applicant cleared a region of Himalayan blackberries from our property. We first trimmed a region with a hand held trimmer then cleared a smaller region with a tractor. On December 17, 2019 we received a stop work notice from the city and complied. On February 22, 2020 we submitted a preliminary tree plan to the city and our application was formally marked complete. Then on February 27, 2020 we received an email from the city explaining the municipal code 17.40 and giving us the ‘informal okay’ to continue work on our property. With this notice, and the preliminary tree plan submitted and complete, we then cut down 3 maple trees on our property on April 12, 2020. On April 15, 2020 we received another email from the city notifying us that the newly cut trees would need to be accounted for on the final tree plan. A formal tree plan was then submitted to the city by Dave Reynolds surveying, again matching our preliminary plan and including the maple trees that were cut. We the applicant have maintained open communication with the city throughout this whole process and have done our best to meet all regulations. To say we have acted inappropriately and without care is simply not true.

**Beach after Himalayan blackberries removal. Region outside of protection zones.**

**Photo on the left illustrates location of the protection zone from D-17 (Columbia River) side, photo taken from beach looking up towards house.**

- Red line marks 75 ft. from D-17 (Columbia River)
- Region to right of red line is outside of the protection zone

**Photo on the right illustrates location of the protection zone from D-16 (Dalton Lake) side, photo taken from hillside looking out at beach.**

- Red line marks 75 ft. from D-16 (Dalton Lake)
- Region to the left of red line is hand trimmed and within the protection zone, region to the right of red line is tractor and outside of the protection zone





Photo illustrating location of removed trees well outside protection zones  
Red arrows marking tree stumps.



## Letter from city regarding St Helens municipal code 17.40

**From:** Andrew Schlumpberger <andrewschlumpberger@gmail.com>  
**Date:** May 6, 2020 at 07:11:45 PDT  
**To:** ron@pr-insure.com  
**Subject:** Fwd: blackberry removal @ 160 Belton Road

Sent from my iPhone

Begin forwarded message:

**From:** Jacob Graichen <jacob@ci.st-helens.or.us>  
**Date:** February 27, 2020 at 20:37:43 PST  
**To:** "a\_schlumpberger@hotmail.com" <a\_schlumpberger@hotmail.com>  
**Subject:** blackberry removal @ 160 Belton Road

Andrew,

I've been meaning to tell you that since you have determined the protection zones for the Columbia River and Dalton Lake (as part of the land partition effort) and know those boundaries now, you may remove blackberries by any means including heavy equipment AS LONG AS IT IS OUTSIDE OF THE PROTECTION ZONES. If that is all you are doing, you don't need a permit to work in the floodplain either.

But please note that the City's code are very clear that such work within the protection zones using power assisted equipment, machinery or chemical control is not exempt from permitting. A PERMIT IS REQUIRED FOR SUCH WORK WITHIN THE PROTECTION ZONES.

1

However, removal of invasive plants (such as the blackberries you have down there) via electric or handheld (non-power assisted) equipment doesn't require a permit. I recommend that route for the areas inside the protection zones.

Please see Chapter 17.40 of the St. Helens code if you want to dig into the details further. Our code can be found online here:  
<https://www.codepublishing.com/OR/StHelens/>

This is in reference to the violation sent to you in December, which I have attached for your reference. Thank you for your cooperation with that.

Still working on the partition.

Jacob Graichen, AICP, City Planner  
 City of St. Helens  
[jacobg@ci.st-helens.or.us](mailto:jacobg@ci.st-helens.or.us)  
 (503) 397-6272



## Drainage Easement

The appellant has made it clear that she wishes to use an outdated easement that encumbers our property as a “backup” plan to city sewer. This is not a viable option and therefore should not influence your decision to approve our partition.

The drain field easement in question on this partition is an old easement dating back over 40 years ago to 1976. At the time this easement was made, city step was not available and both 160 and 250 Belton road were connected to a private drain field. Per Richard Sorenson, the previous owner of 160 Belton road, city step system became available in the early 1990s and at that time both 250 and 160 Belton road hired a city approved engineer and disconnected their private system, hooking into city step and decommissioning the private drain field. This statement by the previous owner is supported by St Helens municipal codes 13.14.060 and 13.14.070 as well as Oregon administrative rule (OAR) 340-071-0185 which state that when a sewerage system becomes available, a private system must disconnect and connect to the public sewer. At the time of connection to public sewer, decommission of the private system must occur by hiring a city approved engineer to disconnect the system and fill all private tanks, cesspools, and seepage pits with reject sand, gravel or other approved material in order to abandon and decommission the system.

To say the appellant can simply tap into the old drain field to use as a “backup” if city step were to fail is not realistic. According to the city public works director, the city is responsible to maintain and repair any break in the main line. If a break were to occur to the main line, many homes along Belton road would be affected and the city would have to repair the line in a timely manner.

As long as city step is physically and legally available to the appellant than it must be used. This is supported by both the city’s public works director and St Helens municipal code 13.14.060(4), stating if a property is within 160 feet to city sewer that they are required to connect. The appellant cannot choose to use an outdated system by choice when the city step is legally and physically available to her.

The sole purpose of the easement in question was to allow the appellant wastewater access to the existing drain field. When the drain field was decommissioned in 1990 by the previous owner, so was the sole purpose of this easement. The old easement does not meet today’s standards, it was left open ended without an expiration date. Important details that are now required by DEQ when wastewater systems are utilized via private easements. The title company supports this, and eliminated the easement as an exception to our title based off enough evidence from the city, St Helens municipal code and Oregon administrative rule that proved this easement was no longer an approved or viable option.

At over an acre in size, the outdated easement is large and cumbersome. Unfortunately, after repeated attempts we have not been able to find middle ground with the appellant or to settle our differences in the form of an easement reduction or arbitration. Rather it has become evident by the appellant, who is a seasoned paralegal that we will have to continue to pursue this manner in a private suit to quiet the title. Although this was not our intention , we feel confident based on the evidence we have provided that this will be resolved within the next 12 months as requested as a condition.



**Large mature trees over the old drain field location  
(Per DEQ requirements no trees or shrubbery are permitted over a working wastewater system)**



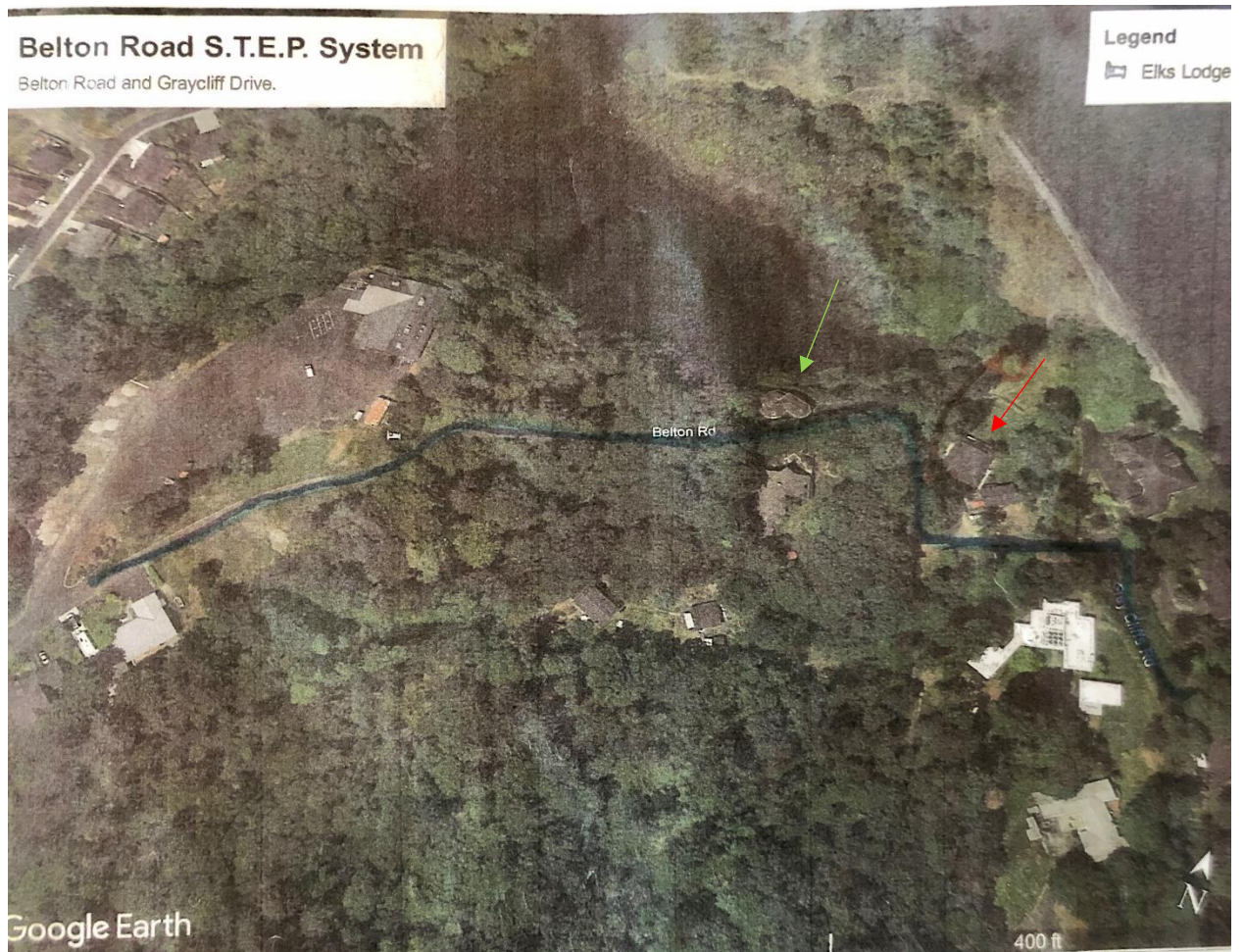


**Aerial map of 250 Belton road and 160 Belton road illustrating there close proximity to city  
step system (less than 160 ft.)**

**Red arrow is 160 Belton Road (applicant's house)**

**Green arrow is 250 Belton Road (appellant's house)**

**Black line is city step system**



## Letter from Richard Sorenson (previous owner of 160 Belton rd.)

March 8, 2020

To Whom It May concern:

I, Richard Sorenson @ 160 Belton Rd, Art Johnston @ 258 Belton Rd. and Steve Edvey @ 585 Gray Cliff Dr. in St. Helens, OR collectively went together with approval of the City of St. Helens, hired a Certified Engineer. Approved by the city to disconnect our septic systems + hook up to the city sewer system. All former septic systems were abandoned by filling old tanks with sand, disconnected old drainfields & installed new concrete holding tanks that pump to the city sewer. All old drainfields are obsolete, not in use & dried up. Art Johnston had AN EASEMENT to my property & signed off on that easement at the time of hooking up to the city sewer. I have moved & do not have the paperwork anymore, but did provide to the city that information at that time. This all happened in the early or middle of the 1990's. Please call me if you have any questions & I will be glad to answer to the best of my ability. 503-369-5075.

R/S



**St Helens municipal code****13.14.060(4)**

contained herein, or which, in any manner, fails to conform with requirements of this chapter, is declared to be a public nuisance and a violation of this chapter. (Ord. 3233 § 2, 2018)

**13.14.060 Use of public sewers required:**

(1) It is unlawful for any person to place, deposit, or permit to be deposited in an unsanitary manner upon public or private property within the city of St. Helens or in any area under the jurisdiction of the city any human or animal excretion, garbage, or other objectionable waste that creates an offensive odor or health hazard.

(2) It is unlawful to discharge to any natural outlet within the city of St. Helens or in any area under the jurisdiction of the city any domestic, commercial, or industrial wastewater, or other polluted water, except where suitable treatment has been provided in accordance with provisions of this chapter.

(3) Except as hereinafter provided, it is unlawful to construct any privy, septic tank, cesspool, or other facility intended or used for the disposal of wastewater.

(4) The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purpose, situated within the city of St. Helens, and abutting on any street, alley, easement, or right-of-way in which there is now located or may in the future be located a sanitary sewer of the city, is required at his or her expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper publicly

operated treatment works in accordance with the provisions of this chapter, within 90 days after date of official notice to do so; provided, that the sewer is within 160 feet of the property line.

(5) The city engineer may require owner to design, build, and install a STEP system in order to gain access to the public sewer system. Owner will be required to enter into a sewer agreement with the city. Such agreement shall contain the following conditions:

(a) The design of the system, the equipment to be installed, and the materials to be used must be approved by the city engineer;

(b) The installation of the system must be approved by the city;

**St Helens municipal code**  
**13.14.070**

(g) The city engineer may set any other conditions that are consistent with the purpose of this chapter. (Ord. 3233 § 2, 2018)

**13.14.070 Private wastewater disposal.**

(1) Where a public sewer or publicly operated treatment works is not available under the provisions of SHMC 13.14.060 the building sewer shall be connected to a private wastewater system complying with the provisions of this section.

(2) Before commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit from the DEQ or another agency having jurisdiction.

(3) At such time as a public sewer or POTW becomes available to a property served by a private wastewater disposal system, a connection shall be made to the public sewer or POTW in compliance with SHMC 13.14.060 and any septic tanks, cesspools, and similar private wastewater disposal facilities shall be abandoned and after pumping filled with suitable material at the time of said connection.

(4) The owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the city. (Ord. 3233 § 2, 2018)



## Oregon administrative rule

## OAR 340-071-0185

Voting Elections State Archives Audits

## Department of Environmental Quality

### Chapter 340

#### Division 71

#### ONSITE WASTEWATER TREATMENT SYSTEMS

#### 340-071-0185

#### Decommissioning of Systems

(1) The owner must decommission a system when:

- (a) A sewerage system becomes available and the facility the system serves has been connected to that sewerage system;
- (b) The source of sewage has been permanently eliminated;
- (c) The system has been operated in violation of OAR 340-071-0130(13) and a repair permit and Certificate of Satisfactory Completion have not subsequently been issued for the system;
- (d) The system has been constructed, installed, altered, or repaired without a permit required in this division, and a permit has not subsequently been issued for the system; or
- (e) The system has been operated or used without a required Certificate of Satisfactory Completion or Authorization Notice and a Certificate of Satisfactory Completion or Authorization Notice has not subsequently been issued for the system.

(2) Procedures for decommissioning:

- (a) Tanks, cesspools, and seepage pits must be pumped by a licensed sewage disposal service to remove all septage.
- (b) Tanks, cesspools, and seepage pits must be filled with reject sand, bar run gravel, or other material approved by the agent, or the container must be removed and properly disposed.

(3) If, in the judgment of the agent, compliance with section (2) of this rule is not reasonably possible or necessary to protect public health, welfare, safety, or public waters, the agent may waive one or both of those requirements.

Statutory/Other Authority: ORS 454.625 & 468.020  
 Statutes/Other Implemented: ORS 454.615 & 454.655  
 History:  
 DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05  
 DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95  
 DEQ 15-1986, f. & ef. 8-6-86  
 DEQ 5-1982, f. & ef. 3-9-82  
 DEQ 10-1981, f. & ef. 3-20-81

Please use this link to bookmark or link to this rule.

**Letter from city's public works director  
If within 160ft must connect to city step system**

Begin forwarded message:

**From:** Andrew Schlumpberger <andrewschlumpberger@gmail.com>  
**Date:** June 18, 2020 at 15:54:08 PDT  
**To:** Jeffrey Seymour <jeffseymour1@earthlink.net>, ron@pr-insure.com, Lindsay McDonough <lmcdonough91@gmail.com>  
**Subject:** Fwd: [Email from external sender] Question

Hi Jeff,

Got this from Sue confirming hooking up within 160 feet of City Sewer

Thanks,  
Andrew

Begin forwarded message:

**From:** Sue Nelson <SueN@ci.st-helens.or.us>  
**Date:** June 18, 2020 at 15:50:55 PDT  
**To:** Andrew Schlumpberger <andrewschlumpberger@gmail.com>  
**Cc:** Jacob Graichen <jacob@ci.st-helens.or.us>  
**Subject:** RE: [Email from external sender] Question

Hello Andrew,

This is more of a question for someone in the Planning Department because it is part of the Development Code, not the public utility construction standards. However, it is my understanding that if a public utility is legally and physically available within 160 linear feet of a property, they are required to connect to the public utility. I have copied Jacob on this reply in case I have misstated the condition.

Thank you,  
Sue



**Letter from city's public works director  
City responsibility to repair or maintain city step main line**

ent from my iPhone

egin forwarded message:

**From:** Sue Nelson <[SueN@ci.st-helens.or.us](mailto:SueN@ci.st-helens.or.us)>  
**Date:** June 16, 2020 at 09:17:16 PDT  
**To:** Andrew Schlumpberger <[andrewschlumpberger@gmail.com](mailto:andrewschlumpberger@gmail.com)>  
**Cc:** Jacob Graichen <[jacob@ci.st-helens.or.us](mailto:jacob@ci.st-helens.or.us)>  
**Subject:** RE: [Email from external sender] Step System

Hi Andrew,

It is the City's responsibility to maintain the 2-inch common pressure main and it has been repaired in the past by the City. The exception would be if the line were damaged by a person or persons, such as a contractor doing work in the area or someone purposefully damaging the line, then these people would be responsible for the repairs. However, the individual service connections to the common pressure main are not maintained by the City and none of the pipes, valves, pumps, tanks, etc. that are part of the service line for the individual lots are maintained in any way by the City.

I hope this answers your question.

Thank you,

*Sue Nelson, P.E.*

Interim Public Works Director

503.397.6272, x 123

[suen@ci.st-helens.or.us](mailto:suen@ci.st-helens.or.us)

**Letter from Erin O'Connell  
Environmental Services Specialist  
Required to connect to public city sewer system**

egin forwarded message:

**From:** Erin O'Connell <erin.oconnell@columbiacountyor.gov>  
**Date:** February 18, 2020 at 08:31:05 PST  
**To:** Andrew Schlumpberger <a\_schlumpberger@hotmail.com>  
**Subject: Re: 160 Belton Rd septic system easement findings**

Connection to City sewer is based on whether the city would let you connect and other factors. It is my understanding that both properties are connected and I would assume that as part of partition, then new lot would be connected as well. This depends on what the sewer system can handle connection wise; these are questions for the City of St. Helens. If sewer is legally and physically available, then when a septic system fails it is required to be connected.

Erin O'Connell  
Environmental Services Specialist  
Columbia County  
503-397-7222

**Haley Borton Law to Ticor Title**  
**Eliminated easement as an exception to our title**  
**Page 1 of email**

**From:** Haley@borton-law.com <Haley@borton-law.com>  
**Sent:** Friday, April 3, 2020 1:44 PM  
**To:** Boggs, Heather <Heather.boggs@ticortitle.com>  
**Subject:** Andrew Schlumpberger - Easement

Hi Heather,

I hope you are doing well through this bizarre situation with the virus!

My office was contacted by Andrew Schlumpberger regarding his easement issue. After thorough legal research of the issue, I am confident that the easement has legally terminated on 3 different grounds, as supported by Oregon case law. As for next steps on my end, I can initiate an expensive and lengthy quiet title action, but I know when the facts are clear, often these issues can be resolved via the title company, without filing suit. It is my understanding that when title companies go this route, they often require written documentation supporting their actions. I know Andrew has likely forwarded you written documents from the previous owner regarding their intent to terminate the easement, as well as information from the city and county about their position on the matter. I have included below a simple overview of my legal analysis on the issue, in case that is helpful for your records as well.



## Haley Borton to Ticor Title continued

### Page 2 of email

#### OVERVIEW OF BASIC LAW

Under Oregon law, easements are ongoing unless extinguished by 1) Consent, 2) Prescription (as defined in the original recorded easement), 3) Abandonment, 4) Merger of the properties, or 5) The necessity that gave rise to the easement ceases to exist (Extinguished by Destruction is a subsection of this topic).

#### APPLICABLE PRINCIPLES

In the current case, the easement has been extinguished (or sometimes referred to as terminated by a matter of law) by

- Abandonment
- Necessity Giving Rise Ceases to Exist
- Extinguished by Destruction

#### LEGAL ANALYSIS AND CASE LAW

##### **Abandonment**

The easement in question is recorded in the existing deed for 160 Belton Road, St. Helens, and expressly provides that the easement is for the sole purpose of maintenance, construction, etc. of the septic system. This septic system has been abandoned, as defined by Oregon case law.

Abandonment occurs if there is evidence of an intent to permanently abandon the easement. *Shields v. Villareal*, 177 Or App 687 (2001); *Powers v. Coos Lumber*, 200 Or 329 (1953); and *Bitney v. Grim*, 73 Or 257 (1914). Additionally, when "non-use" is being relied upon to establish abandonment, the element of abandonment can also be shown by establishing non-use + verbal intent to permanently not use + conduct inconsistent with intent to make further use. *Connor v. Lucas By & Through Lucas*, 141 Or App 531, 538 (1996).

In the present case, the previous owners of both properties decided the septic system would not be used in the mid 1990's, and they filled it with concrete and sand, making it permanently unusable. Both previous owners report that they believed they had recorded an agreement to terminate the easement after destroying the septic system, although this record cannot be located. This intention is documented in writing through a letter drafted by the previous owner of 160 Belton Rd, which he reports writing with the assistance of the previous neighbor. (The neighbor was not feeling well enough to write a separate letter.) Additionally, the owners acknowledge that they knew they could no longer opt to use the outdated septic system after switching to the city system, further establishing their intent to permanently abandon the septic system.

Although not required, the second option for establishing abandonment is also met. There was non-use of the septic system; there was verbal and written documentation from the previous neighbors establishing intent to permanently not use the easement and the septic system; and their conduct in filling it with concrete and sand was inconsistent with an intent to make further use.

##### **Necessity that Gave Rise Ceases to Exist**

The easement in question is recorded in the existing deed for 160 Belton Road, St. Helens, and expressly provides that the easement is for the **sole** purpose of maintenance, construction, etc. of the septic system. The necessity that gave rise to the easement — access to the septic system — no longer exists, as the septic system was destroyed.

**Haley Borton to Ticor Title continued****Page 3 of email**

An easement by necessity exists when there is no other means of access to the necessity, *Van Natta v. Nys*, 203 Or 204 (1954); and the easement terminates by operation of law when the necessity that gave rise ceases to exist. *Rose v. Denn*, 188 Or 1 (1950) and *Law of Easements and License in Land*, 10-18 — 10-19 (WEST GROUP 2001).

In the present case, the necessity that gave rise to the easement was access to the area where the septic system was contained, in order to properly maintain it. The neighbor did not have another way to access and maintain the system except via the other property. Since the property owners decided the septic system would not be used by filling it with concrete/sand to make it permanently unusable, and deliberately choosing to switch off the system knowing they would not be able to switch back, the necessity that gave rise to the easement— access to the septic system— ceased to be a necessity.

**Extinguished by Destruction**

Oregon Law makes clear that easements can also be extinguished by destruction. *Hahn v. Baker Lodge No. 47, A.F. & A.M.*, 21 or 30 (1891).

In the present case, the owners conduct in filling the septic system with sand and concrete destroyed the septic system. As the easement clearly provides that its sole purpose is to access/maintain the septic system, and that septic system was permanently destroyed, the easement has been extinguished.

Please let me know if there is any other way that I can provide assistance.

Thanks,  
Haley

---

**HALEY L. BORTON** | ATTORNEY

**BORTON LAW, LLC**

503.395.4120

239 S. 1st Street, St. Helens, OR 97051

[haley@borton-law.com](mailto:haley@borton-law.com)

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## Road Standards

Belton road is one of many narrow roads in St Helens. The nearby bedrock, wetlands, steep slopes and dense mature trees create many topographical constraints that would be adversely impacted if Belton road were required to widen to meet street standards. St Helens municipal code 17.152.030(5b) supports maintaining Belton road as a skinny street, and gives the planning commission “authority to determine if widening a road to meet street standards would result in an unacceptable adverse impact on the existing natural features such as wetlands, steep slopes and mature trees’. The topographical constraints of this region contribute largely to its beauty and natural habitat, adversely impacting Belton roads natural features for the addition of one single family home would be unacceptable and unreasonable.

Belton road is not a main city road, it’s a narrow community road currently serving 10 homes. The roadway is clearly marked with a no outlet sign to notify its travelers and the traffic is minimal (less than the city standard of 200 average daily trips). The members of this community drive slowly and respectfully and according to community emergency services few to no accidents have been reported on this roadway. To ignore this and expect this community road serving few homes to conform to the standard city street is not realistic. St Helens municipal code 17.152.030(4bii) supports this by stating it is “impractical to conform to existing street patterns because of particular topographical or other existing conditions of the land. Such a plan shall be based on the type of land use to be served, the volume of traffic, the capacity of adjoining streets and the need for public convenience and safety”.

While it is unrealistic to widen the entirety of Belton road to meet street standards, the staff’s condition to add a 24x30 turnout on the 90 degree turn will profoundly increase the safety of this road. The current state of the 90 degree turn prevents any visualization of oncoming traffic. However with the approval of this partition, a turnout will be placed that allows traffic to clearly see the road and potential vehicles ahead. Along with this turnout, two more turnouts will naturally occur as we meet driveway requirements. These regions will greatly improve the safety of Belton road and can be visualized on the map provided.

**St Helens municipal code**

**17.152.030(5b)**

**Exception to street standard**

Many roads in St Helens are below city standard specifically roads along grey cliffs and riverside due to the hard bedrock and topographical constraints, SHMC supports maintaining the preservation of these areas with skinny streets, Belton road is not an exception to this.

Local "Skinny" Street	40'	20' or 26'	1 – 2	None
<p>Applies to bicycle lanes required in Transportation Systems Plan (TSP) or Public Facilities Plan (PFP)</p> <p>(ii) Anticipated traffic generation;</p> <p>(iii) On-street parking needs;</p> <p>(iv) Sidewalk and bikeway requirements;</p> <p>(v) Requirements for placement of utilities;</p> <p>(vi) Street lighting;</p> <p>(vii) Drainage and slope impacts;</p> <p>(viii) Street tree location;</p> <p>(ix) Planting and landscape areas;</p> <p>(x) Safety for motorists, bicyclists, and pedestrians; and</p> <p>(xi) Access needs for emergency vehicles;</p> <p>(b) Improvements to streets shall be made according to adopted city standards, unless the approval authority determines that the standards will result in an unacceptable adverse impact on existing development or on the proposed development or on natural features such as wetlands, steep slopes or existing mature trees. In approving an exception to the standards, the approval authority shall determine that the potential adverse impacts exceed the public benefits of the standards. In evaluating the public benefits, the approval authority shall consider the criteria listed in subsection (5)(a) of this section.</p>				



**St Helens municipal code**

**17.152.030(4bii)**

**Impractical to conform due to topographical conditions based on type of land to be served**

17.

(4) Street Location, Width and Grade. The location, width and grade of all streets shall conform to an approved street plan and shall be considered in their relation to existing and planned streets, to topographic conditions, to public convenience and safety, and in their appropriate relation to the proposed use of the land to be served by such streets:

(a) Street grades shall be approved by the city engineer in accordance with subsection (13) of this section; and

(b) Where the location of a street is not shown in an approved street plan, the arrangement of streets in a development shall either:

(i) Provide for the continuation or appropriate projection of existing streets in the surrounding areas; or

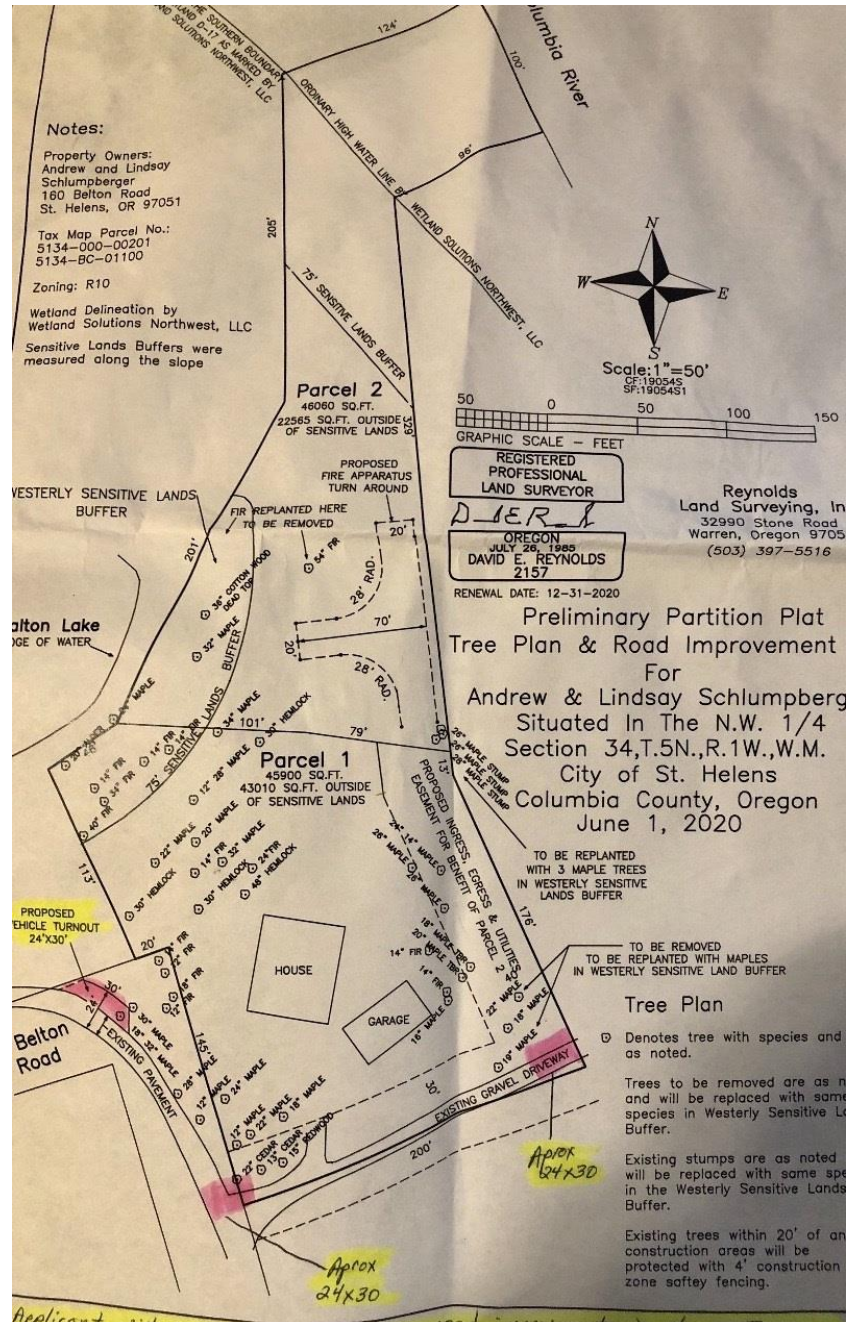
(ii) Conform to a plan adopted by the commission, if it is impractical to conform to existing street patterns because of particular topographical or other existing

conditions of the land. Such a plan shall be based on the type of land use to be served, the volume of traffic, the capacity of adjoining streets and the need for public convenience and safety.

(5) Minimum Rights-of-Way and Street Widths. Unless otherwise indicated on an approved street plan or adopted corridor plan, or as needed to continue an existing improved street, street right-of-way and roadway widths shall not be less than the minimum width described in Figure 19. Where a range is indicated, the width shall be determined by the decision-making authority based upon anticipated average daily traffic (ADT) on the new street segment. (The city council may adopt, by resolution, design standards for street construction and other public improvements. The design standards will provide guidance for determining improvement requirements within the specified ranges.) (See "City of St. Helens Engineering Department Public Facilities Construction Standards Manual.")

(a) The planning director shall recommend, to the decision-making body, desired right-of-way width and pavement width of the various street types within the subdivision or

**Survey map illustrating the proposed turnouts**  
**One 24x30 turnout constructed on 90 degree turn**  
**Two other turnouts created naturally with roadway improvements**



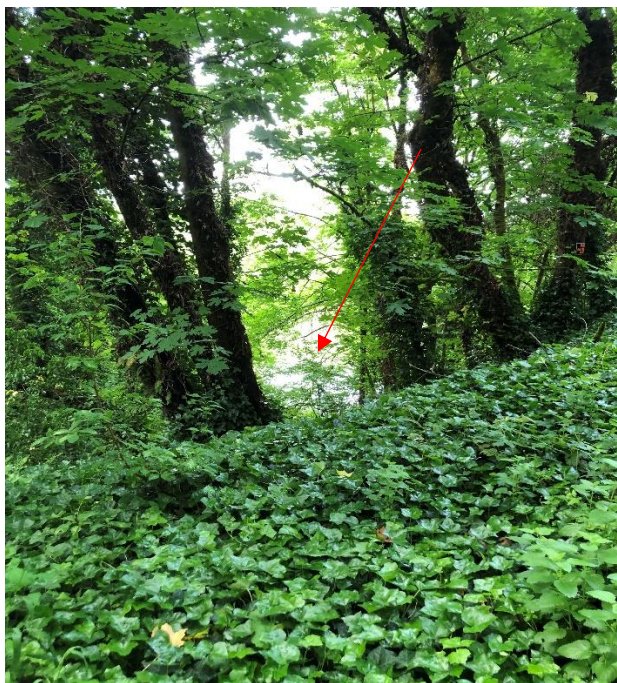


**Topographical constraints**

Photo on left illustrates poor visualization on 90 degree turn, yellow arrow represents rock bluff

Photo on right illustrates close proximity of D-16 (Dalton Lake) to Belton road

Bottom photo illustrates steep slope with dense mature trees off right side of Belton road






**Bid from Triton for the estimated cost of widening Belton road**  
**(Bid excludes cost of blasting rock and moving power and water lines)**  
**(The cost of blasting rock and moving such lines would not only be a huge financial burden it was also**  
**create more emotional and potentially structural burden to the surrounding neighbors.)**

Triton Lawn & Yard Maintenance  
 PO Box 1206  
 Rainier, OR 97048 US  
 503-793-7597  
 nealk13@gmail.com

## Estimate



**ADDRESS**

Andrew Shlumpberger  
 160 Belton Rd  
 St Helens, OR 97051

ESTIMATE #	DATE
1023	05/27/2020

ACTIVITY	QTY	RATE	AMOUNT
<b>2-Equipment:2-Excavator</b> Move 2 fire hydrants from proposed Belton road right of way. This excludes cost associated with breaking, drilling or blasting rock.		35,000.00	35,000.00
<b>2-Equipment:2-Excavator</b> Remove 14 trees from proposed Belton road right of way. Including stumps and roots.	1	18,000.00	18,000.00
<b>2-Equipment:2-Excavator</b> Prepare roadway surface to Columbia County Private road standards. This excludes any cost associated with breaking, drilling or blasting of rock.	1	45,000.00	45,000.00
<b>2-Equipment:2-Excavator</b> Pave road to Columbia County Private Road standards.	1	60,000.00	60,000.00
<b>1-Rock:3. 3 inch minus</b> Base rock for road widening	1	7,000.00	7,000.00
<b>1-Rock:1. 3/4 inch minus</b> Top Coat for road widening	1	1,800.00	1,800.00
<b>5-Other:Supplies</b> New hydrants to meet fire department code	1	3,500.00	3,500.00
<b>2-Equipment:1-Solo Truck</b> Haul rock to job site	1	6,000.00	6,000.00
<b>5-Other:Disposal Fee</b> Disposal of fill, wood, waste and stumps	1	5,000.00	5,000.00
<b>TOTAL</b>			<b>\$181,300.00</b>

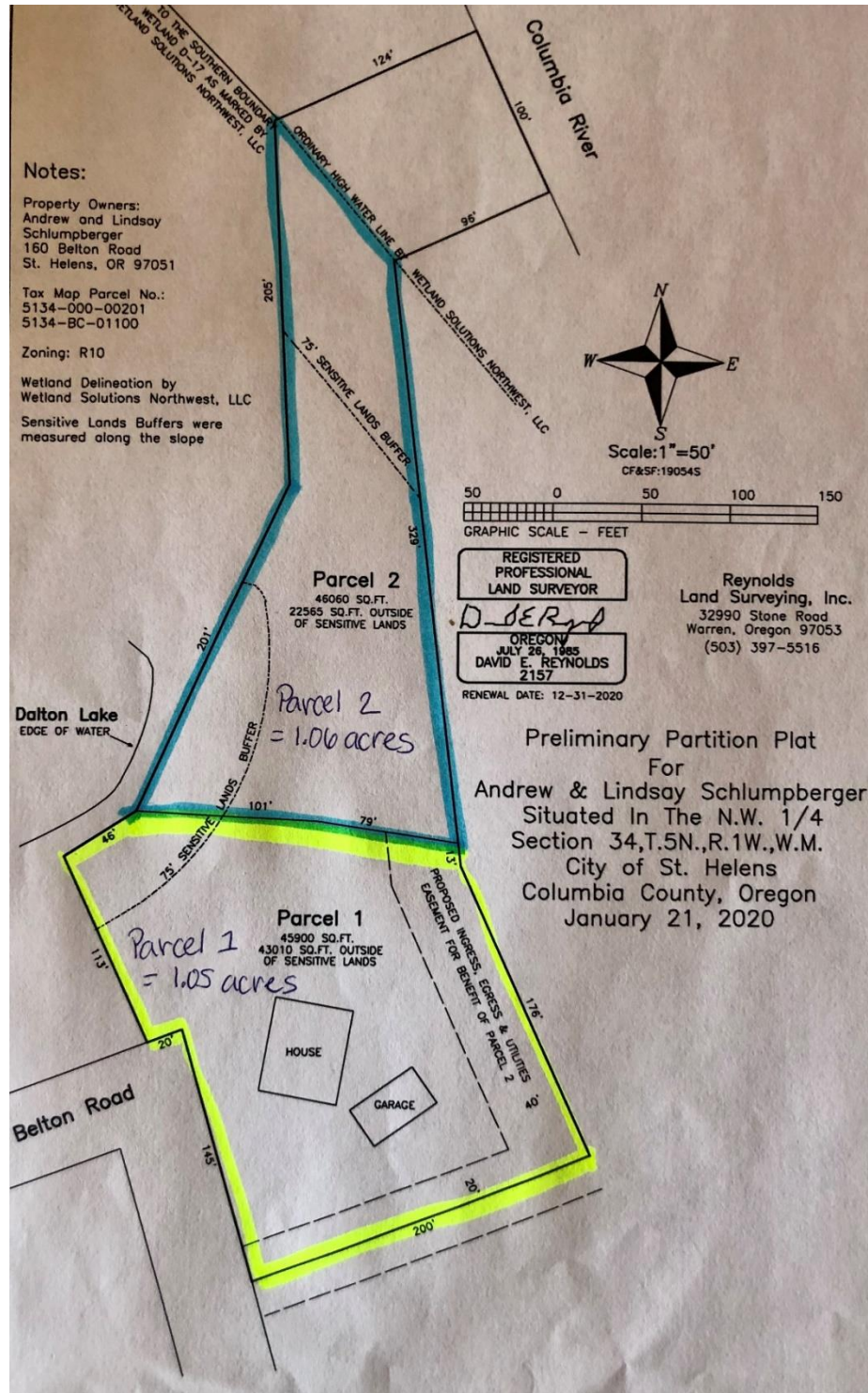
Accepted By

Accepted Date



### Map illustrating the size of each parcel

Each parcel is greater than 1 acre in size, larger than most surrounding properties off Belton road



### **Conclusion**

This partition was already reviewed by your staff and was approved once and then amended with conditions. The appellant has not brought any new information forward that has not already been addressed in these conditions nor have they brought forth any new legal basis to deny this partition. We have agreed to meet all the requirements and conditions laid out by the staff and therefore feel there is no other decision but to affirm the approval ruling. You the commission have this authority. To prolong this process any further would be unreasonable, and cause undo financial and emotional burden.

Dear Planning Commission:

I feel I must clarify some of the issues that have been brought up by Jeffrey Seymour's letter dated 6/15/2020.

The first and most obvious misleading photo can be found on page 14/23 which was taken from a boat in the middle of the river in an attempt to prove that all houses would have unaffected views of the Columbia River. Each view needs to be evaluated from within each home. What the picture does not reveal is my mother's view downriver from all windows facing northwest: master bedroom, master bath, library, living room, dining room; on the lower level: guest bedroom, family room. Please see the attached photo showing the proposed house site viewed from her living room.

I'm also extremely concerned that throughout the proposal, maps have only shown 160 Belton Road without considering the adjoining properties. It has not revealed that the sole ingress/egress to 140 Belton Rd lies directly on the lot line between the two properties. While the location of the applicant's proposed driveway may look reasonable on paper, it will actually destroy the privacy barrier between the two existing houses.

The tree plan shown on page 12/23 indicates 2 large shade maples to be removed and replanted with the other replanted trees on the westerly sensitive land buffer. This tree plan does not agree with the driveway plan given to us previously. In March 2020 the applicant assured my mother that they would build their new driveway as close to their garage as possible, resulting in two separate roadways in order to keep her driveway private. This would include a green-way buffer zone, between the two paved drives, of planted trees, greenery, rock, landscaping, etc to be maintained by the applicant, forming a visual and sound barrier to maintain her privacy. See attachment. The current tree plan shows no provision for any privacy for mom's house and eliminates her afternoon shade.

Replanting trees on the opposite side of the site property will do nothing to rectify the removal of mature trees that now offer shade and privacy to the established home at 140. I would request, if the partition is approved, that the applicant be required to adhere to the driveway plan of March 2020 that does offer some privacy consideration.

Thank you for your consideration,  
Robin Nunn

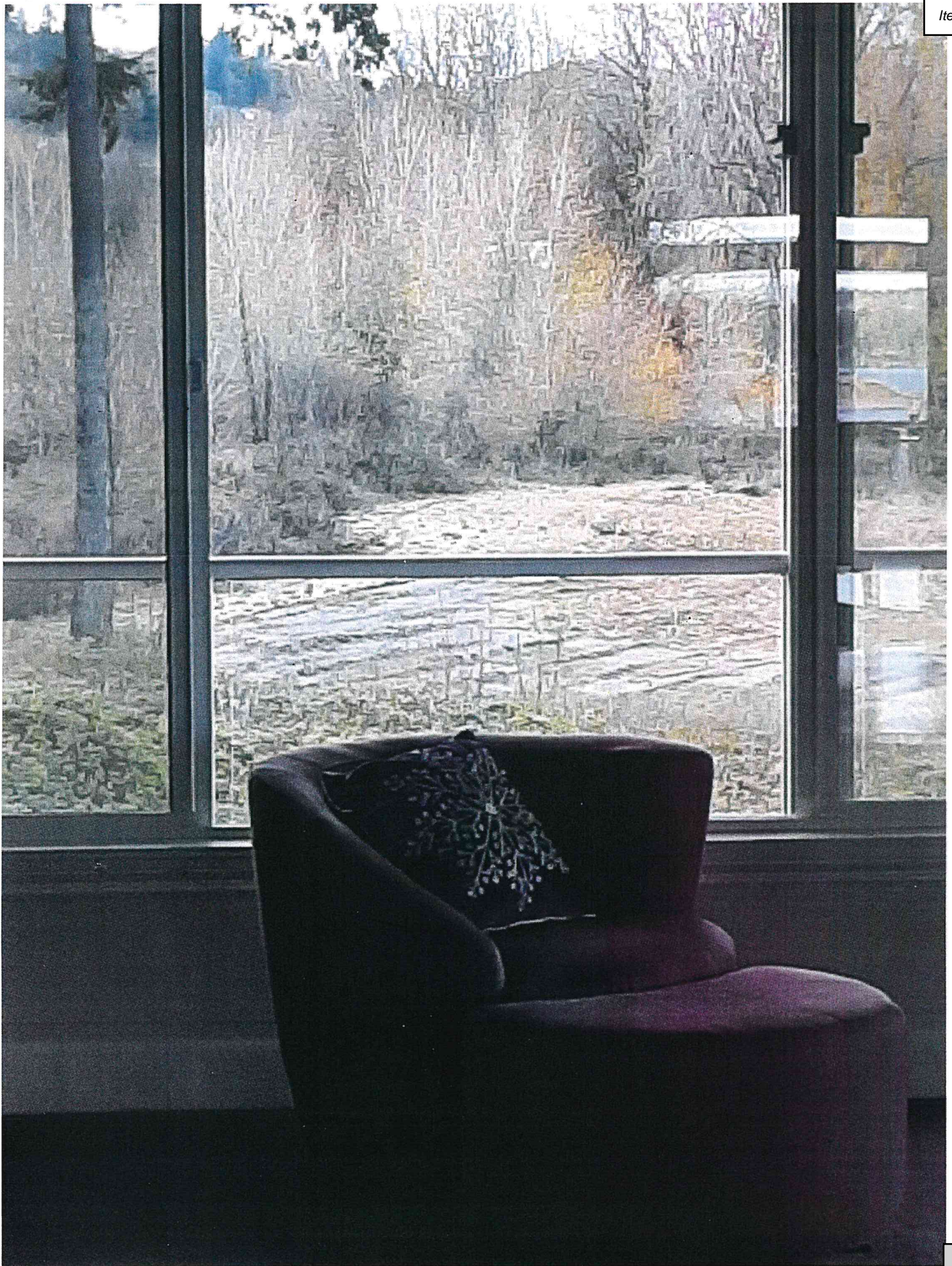
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JUN 23 2020

CITY OF ST. HELENS

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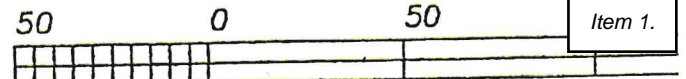






March 2020  
16th

CF&SP:190545



GRAPHIC SCALE - FEET

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*David E. Reynolds*  
OREGON  
JULY 26, 1985  
DAVID E. REYNOLDS  
2157

RENEWAL DATE: 12-31-2020

Reynolds  
Land Survey  
32990 Sto  
Warren, Ore  
(503) 391

Preliminary Partition  
For  
Andrew & Lindsay Schlun  
Situated In The N.W.  
Section 34, T.5N., R.1W.

Parcel 2

46060 SQ.FT.  
22565 SQ.FT. OUTSIDE  
OF SENSITIVE LANDS

Parcel 1



45900 SQ.FT.  
43010 SQ.FT. OUTSIDE  
OF SENSITIVE LANDS

HOUSE

GARAGE

Lake  
WATER

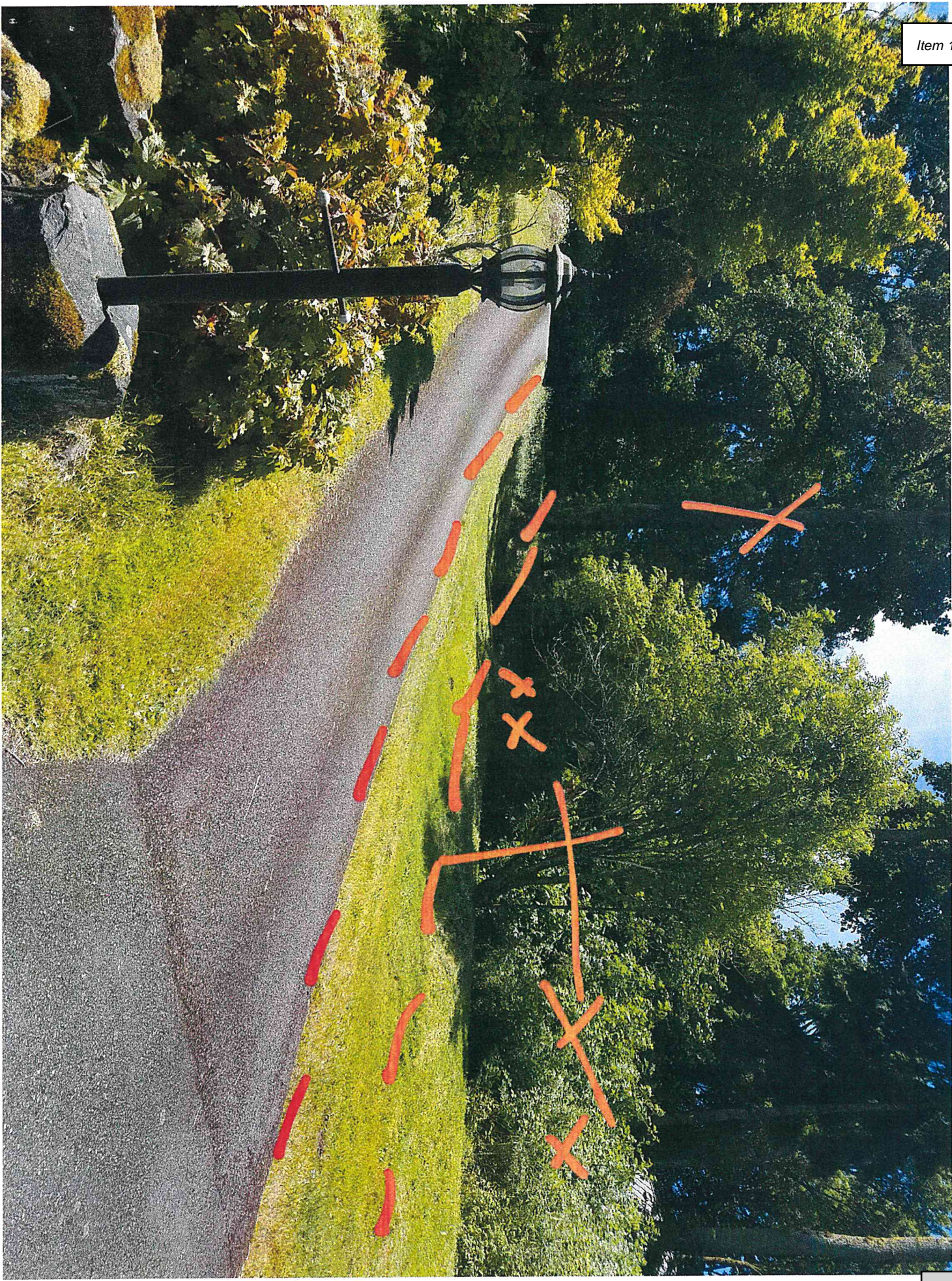
on Road

 Drive ways  
 Buffer Area  
Between Driveway



Item 1.

20200623\_121605.jpg





Item 1.





Item 1.



20200623\_121745.jpg



# Reeve Kearns PC

Attorneys at Law

RECEIVED

JUN 16 2020

CITY OF ST. HELENS

June 16, 2020

510 American Bank Building  
621 S.W. Morrison Street  
Portland, Oregon 97205  
Voice Mail: 503-225-1127  
Email: dan@reevekearns.com

Daniel H. Kearns  
Direct Dial: 503-997-6032

St. Helens Planning Commission  
c/o Jacob Graichen, City Planner  
St. Helens City Hall  
265 Strand Street  
St. Helens, OR 97051

SENT VIA E-MAIL

## Re: Appellant's Post-Hearing Memo – Partition PT.1.20 (Schlumpberger)

Dear Chair Hubbard and Commissioners:

I represent Tracey Hill, the appellant in this appeal, and submit this memo as an initial rebuttal following the June 9<sup>th</sup> hearing. We challenged the Director's approval on three specific grounds, but all relate to the inescapable truth that the Schlumpberger property is very difficult to partition and develop consistently with the code due to its small size, odd shape, proximity to the Columbia River, floodplain, protected wetlands and sensitive areas. The presence of Ms. Hill's recorded septic drainfield easement exacerbates an already difficult development puzzle for these applicants, but you are not obligated to waive or lessen these development hurdles for them, nor do you owe these applicants a second developable lot. Please do not facilitate their skipping important steps in the planning or development process by giving them a conditional approval.

### Access to the Schlumpberger property does not meet code requirements.

This application is not ready to approve because the new parcel proposed (Parcel 2) does not have legal access to serve it as required by SHMC 17.84.070. Belton Road and Gray Cliffs Drive constitute a long, dead-end cul-de-sac within a 50-foot wide right-of-way, already serving 10 homes. The pavement width, however, is dangerously narrow, being only 11 feet wide for most of its length; whereas, SHMC 17.85.070 requires at least a 20' pavement width. The Director's decision and the applicants urge you to apply the private driveway standard from SHMC 17.84.070 that allows periodic turn-outs along a private roadway. Belton Road and Gray Cliffs Drive, however, are public roads with different and higher public street standards, such as 20-foot pavement widths. The only way to approve Belton Road for an additional dwelling (which would make 11 dwellings served) is with a variance (SHMC Ch. 17.108). The applicants, however, have not requested one, and you lack the authority to approve something that was not requested.

While it appears that no one has been killed on Belton Road to date due to its substandard width, the quickest way to bring that about is to approve more homes like this one. The

applicant's photographs clearly show how narrow and dangerous Belton Road is. The only lawful way to grant relief or a reduction from dimensional standards in the Development Code is by evaluating the approval criteria for a variance, not just waiving the standard as this applicant suggests. As such, the Planning Commission must reject the applicant's soft pitch that Belton Road's existing width is adequate and consistent with Portland's skinny street standards. The inescapable fact remains that it does not meet code, and you cannot lawfully add another dwelling to a substandard road without a variance.

### **Proposed Parcel 2 lacks legal access altogether.**

Aside from whether Belton Road can lawfully support one more dwelling, proposed Parcel 2 lacks legal access altogether. The presence of Ms. Hill's recorded septic drainfield easement precludes the proposed access and development site for a home on Parcel 2. While the applicants claim to have a plan for getting rid of Ms. Hill's easement without talking to her, *i.e.*, by suing her and obtaining a court order that the easement was abandoned, the record before the Planning Commission today only shows that legal access does not exist. It is a near certainty that a contested quiet title law suit, such as the one the Schlumpbergers promise, will not be resolved quickly, easily or cheaply. Despite the Schlumpbergers' promise of a quick victory over Ms. Hill, that will not happen inside of 18 months. It seems pointless and a bit unfair to approve their partition with a condition that assumes a quick resolution in the Schlumpbergers' favor.

Again, the inescapable fact reflected in the record of this application is that the proposed access for Parcel 2 and the only construction site is already occupied by a permanent and duly recorded drainfield easement. The applicants' predecessor signed the easement encumbering their property and never asked that it be extinguished, even after the house was connected to the City's STEP system. Based on those facts and this record, the partition should be denied, which would put both parties on a level playing field to discuss a possible and mutually agreeable adjustment to the recorded drainfield easement.

### **The applicants' unpermitted encroachment of the sensitive lands buffer with a trackhoe shows that their testimony cannot be trusted, and it will be difficult to verify the extent of damage for after-the-fact permitting.**

The applicants admitted to their unpermitted trackhoe work within the sensitive lands buffer and the testimony revealed removal of mature trees and wetland vegetation. Whether intentional or not, this shows an extremely cavalier attitude to the City's wetland and sensitive lands protection regulations and a desire to avoid compliance. Obtaining a permit before the protected resource is cleared with a trackhoe is important as the only way to ensure compliance with the City's substantive regulations. The applicability of the City's Significant Wetlands, Riparian Corridors and Protection Zones (SHMC Ch. 17.40) is clear from its introduction:

All those contemplating land purchase for development are urged to obtain environmental professional field delineations of wetlands and riparian corridors prior to decisions on land use and project design. The burden is on the property owner to

demonstrate that the requirements of this chapter are met or are not applicable to development activity or other proposed use or alteration on the owner's land. Accordingly, as part of any application involving land clearing, alteration or use on a site within 200 feet of a resource, an environmental assessment, prepared and certified by a qualified environmental professional showing the boundaries of the significant wetland, significant riparian corridor and protection zones on the property, is required. The EA shall be prepared at the applicant's sole expense. Assistance from state and federal agencies is encouraged. Alternatively, the property owner may submit a sworn statement from a qualified environmental professional that no significant wetlands, significant riparian corridors or protection zones exist on the site. Environmental assessments must comply with minimum requirements in SHMC 17.40.065.

SHMC 17.40.020(1) (emphasis added).

Environmental assessments, tree and vegetation inventories and wetland delineations often are not possible once a trackhoe has removed everything. At a minimum, the perpetrators of any violations and unpermitted development are legally liable for all such violations:

Owner/developer shall be held strictly liable, and shall hold the city of St. Helens harmless for administrative, civil and criminal penalties for any violation of federal and state statutes, including but not limited to the Clean Water Act, Endangered Species Act and regulations implementing such laws. Nothing herein shall be interpreted as restricting or limiting the city from bringing an enforcement action under Chapter 17.12 SHMC.

SHMC 17.40.030.

If the Planning Commission is inclined to approve this partition and sanction these violations, it should impose a much stricter condition that requires the applicants to obtain a sensitive lands permit, based on a complete environmental assessment designed to uncover the vegetation, trees and wetland resources that were damaged or removed. These applicants should not be given a free pass from the full permitting obligations that they skipped and should have been subject to had they followed the City's rules.

## **Conclusion.**

As indicated by the Planning Director in the attached 2004 lot line adjustment, this parcel was never anticipated or intended to be divided: "Both lots have significant topographic constraints due to steep slopes and wetland/riparian protection zones that future land divisions are unlikely at best." 2004 lot line adjustment at p 3 of 4. The Schlumpberger parcel is simply too small, too oddly shaped, and too constrained to develop with a second home given the riparian areas, wetlands, floodplains, Ms. Hill's recorded drainfield easement and lack of legal access. Full compliance with the City's regulations is required, which has not been demonstrated, and the Planning Commission is not obligated to provide a financial windfall to these applicants by bending the City's rules. To approve this application would be especially unfair when it would simply encourage the lawsuit that the applicants' have promised, should they win a conditional approval.

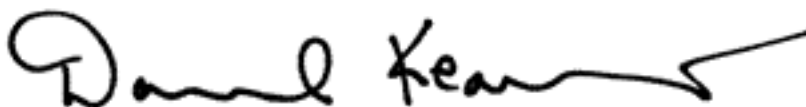
Reeve Kearns P.C.

June 16, 2019

Page 4

Please deny this partition. Unlike most 2-lot partitions, this one has numerous defects, and this record does not demonstrate compliance with all of the mandatory approval criteria. Denial is the only legal and fair option. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Daniel Kearns". The signature is fluid and cursive, with a long horizontal stroke at the end.

Daniel Kearns

Enclosure

cc: Client  
Jeff Seymour



## NOTICE DIRECTOR DECISION OF LIMITED LAND USE

March 10, 2004

FILE NO. Sorenson/Ward LLA 2.04

You are receiving this notice of a decision by the St. Helens Planning Administrator because you are entitled to it by law. On March 1, 2004, Richard and Catherine Sorenson and Kathleen Ward submitted an application to adjust lot lines between two properties located at approximately 140 & 160 Belton Road. The site is also known as Columbia County Tax Lots 5103400000200 & 5103402301100. I am authorized by the St. Helens Community Development Code to approve, approve with conditions or deny this application.

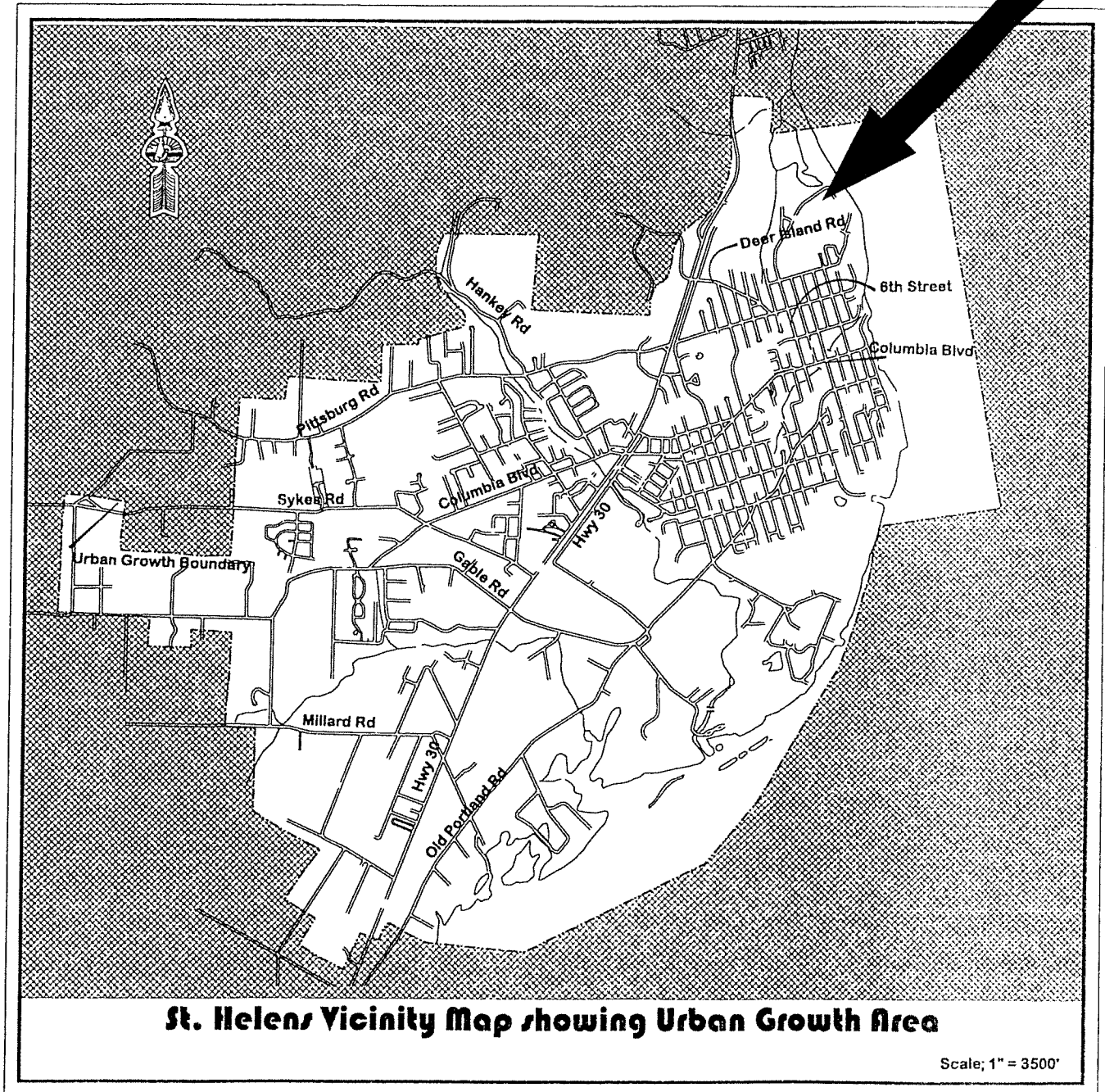
Attached is a complete report of the proposed use, the criteria to allow or deny this use, the evaluation, and the decision. Comments are invited and acceptable before March 20, 2004. My decision will be final as of that same date.

If you believe the criteria for this decision have not been properly evaluated by me or that the facts presented by the applicant are not completely correct, you can apply (properly fill out a St. Helens Decision Amendment or Appeal application and pay the required fee) to amend my decision or appeal my decision no later than close of business (normally 5 PM) on March 30, 2004. Normally only persons entitled to this notice or those who may be adversely affected or aggrieved by my decision may appeal my decision.

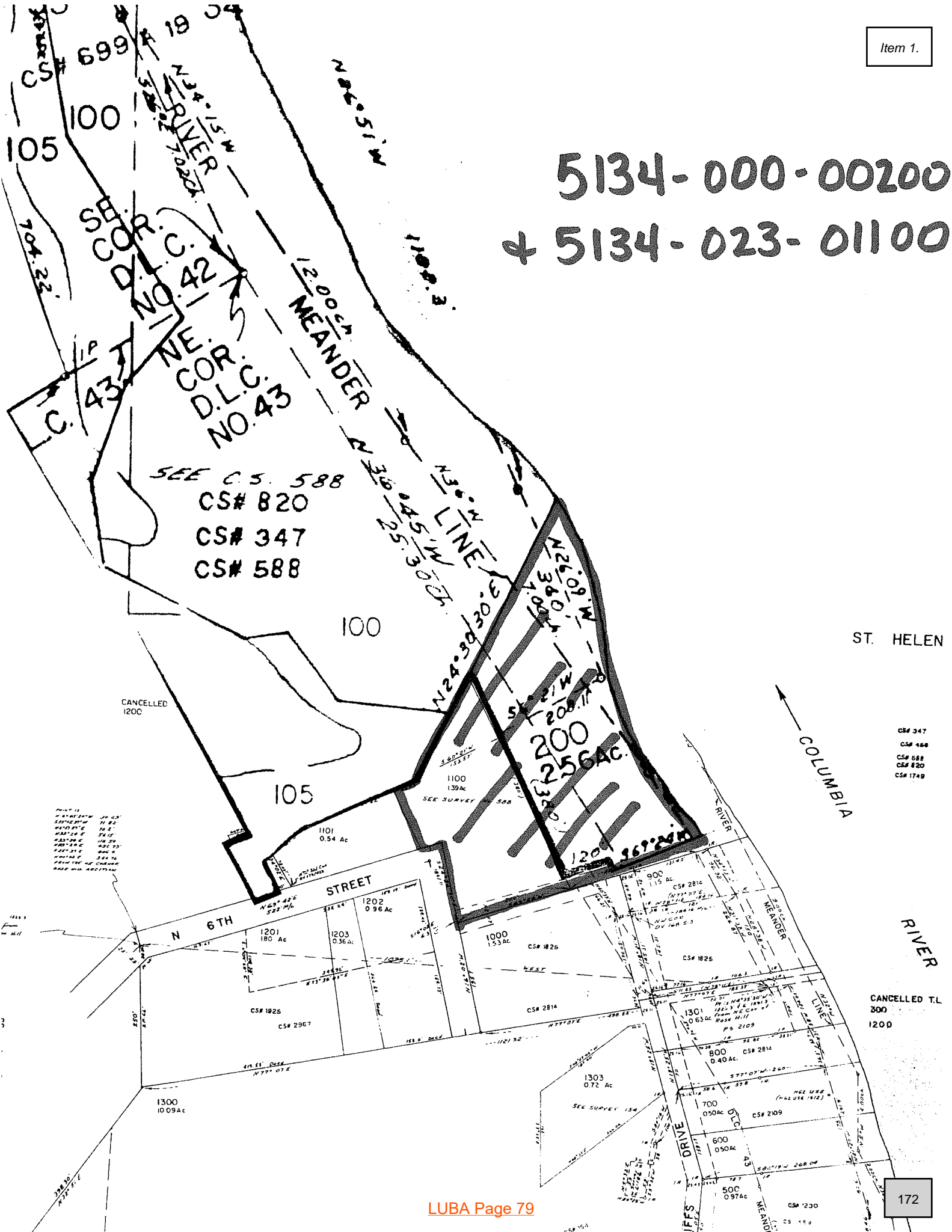
The application file is located at St. Helens City Hall (265 The Strand, St. Helens, OR.) and can be identified as SorWard LLA 2.04. Review of the application file is free and copies are available for a nominal copying charge. Questions about this notice or decision should be directed to City of St. Helens Planning Administrator at 503-397-6272, or Email at [skipb@ci.st-helens.or.us](mailto:skipb@ci.st-helens.or.us), or by mail to P.O. Box 278, St. Helens, OR. 97051, or in person at City Hall, 265 The Strand, St. Helens, OR. 97051.

# Subject Property

~ Approximate Location ~



5134-000-00200  
+ 5134-023-01100



CITY OF ST. HELENS  
**FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
 Sorrenson/Ward Lot Line Adjustment

REQUEST:

Move the common lot line to create frontage on the Columbia River for one property.

FINDINGS:

1. Location- The subject properties are located at 140 and 160 Belton Road. The Columbia County Tax Assessor lot numbers are 5103400000200 and 5103402301100.
2. Field Inspection- Both sites have houses with significant slopes northeast of each house falling towards the river.
3. Comprehensive Plan- The Comprehensive Plan Map designates the area as Suburban Residential.
4. Zoning- The Zoning Map designates the property as R-10, Suburban Residential.
5. Access- The sites are accessible from Belton Road.

CRITERIA and EVALUATION:

1. An additional parcel is not created by the lot line adjustment, and the existing parcel reduced in size by the adjustments is not reduced below the minimum lot size established by the zoning district.

Finding: There are two lots included in this land use decision. The lot line adjustment will increase one lot and decrease the other.

Finding: The minimum lot size for this zone is 10,000 square feet.

Finding: The Sorenson lot is about 1.39 acres and the Ward lot is about 2.56 acres.

Finding: The Sorenson lot will increase by about .2 acres and the Ward lot will decrease by the same.

2. By reducing the lot size, the lot or structure(s) on the lot will not be in violation of the site development or zoning district regulations for that district.

Finding: Both houses are located toward the front of the respective lots and are at least 50



feet from the proposed new property line locations.

Finding: The movement of the common lot line will not be a parallel line move but will be irregular due to topographic situations.

Finding: The minimum frontage will remain 50 feet on both lots with the side setbacks to be at least 10 feet and the rear to be more than 20 feet which are the minimums for this zone for single dwelling units.

3. The resulting parcels are in conformity with the dimensional standards of the zoning district.

Finding: see #2 above.

4. The lots involved were legally created.

Finding: These lots were created by a partition process.

5. Special provisions.

A. *Lot Dimensions:*

1. *Lot size, width, shape and orientation shall be appropriate for the location of the development and for the type of use contemplated, and:*

Finding: The lot sizes, widths, shape and orientation are such that no change in the number of possible lots is anticipated.

- a. *No lot shall be dimensioned to contain part of an existing or proposed public right-of-way.*

Finding: No additional public right of way have been proposed.

- b. *The depth of all lots shall not exceed 2.5 times the average width, unless the parcel is less than 1.5 times the minimum lot size of the applicable zoning district:*

Finding: The depth of the Sorenson lot shall be about 700 feet with most of it either on steep slopes or wetland/riparian protection zone. The depth of the Ward lot shall be about 400 feet with much of it on steep slopes. Each lot is about 200 feet wide.

- c. *Depth and width of properties zoned for commercial and industrial purposes shall be adequate to provide for the off-street parking and service facilities required by the type of use proposed.*

Finding: These lots are for residential purposes.

*B. Through Lots:*

1. *Through lots shall be avoided except where they are essential to provide separation of residential development from major traffic arterials or to overcome specific disadvantages of topography and orientation, and:*

Finding: There are no through lots caused by this action.

- a. *A planting buffer at least 10 feet wide is required abutting the arterial rights-of-way; and*

Finding: There are no through lots caused by this action.

- b. *All through lots shall provide the required front yard setback on each street.*

Finding: There are no through lots caused by this action.

*C. Large lots.*

1. *In dividing tracts into large lots or parcels which at some future time are likely to be redivided, the approving authority may require that the lots be of such size and shape, and be so divided into building sites, and contain such site restrictions as will provide for the extension and opening of streets at intervals which will permit a subsequent division of any tract into lots or parcels of smaller size, and:*

Finding: Both lots have significant topographic constraints due to steep slopes and wetland/riparian protection zones that future land divisions are unlikely at best.

*D. Fire Protection -*

1. *The fire district may require the installation of a fire hydrant where the length of an accessway would have a detrimental effect on firefighting capabilities.*

Finding: No accessway is created for this lot line adjustment.

*E. Reciprocal Easements -*

1. *Where a common drive is to be provided to serve more than one lot, a reciprocal easement which will ensure access and maintenance rights shall be recorded with the approved map.*

Finding: No common drive is proposed.

*F. Accessway*

- 1. Any access way shall comply with the standards set forth in Chapter 1.116, Access, Egress, and Circulation of the Code.*

Finding: There are no special access ways involved in this action.

- G. The streets and roads are laid out so as to conform to the plats of subdivisions and maps of partitions already approved for adjoining property as to width, general direction and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.*

Finding: No changes to the roads are proposed.

CONCLUSION:

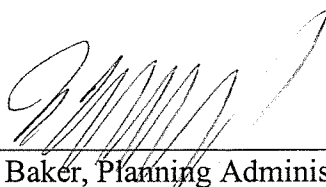
Based on the above stated evaluation of applicable City Ordinances, the following conclusions are offered:

1. No additional parcel is created by the lot line adjustments, and the existing lot reduced in size by the adjustments is not reduced below the minimum lot size established by the zoning district.
2. By reducing the lot size, the lot or structure(s) on the lot will not be in violation of the site development or zoning district regulations for that district.
3. The resulting lots are in conformity with the dimensional standards of the zoning district.
4. The lots involved were legally created.
5. The lots comply with the required special provisions.
6. The lot frontage to a public or private street is fully met.

The Planning Administrator has reviewed the application and the criteria for the lot line adjustments and based upon the above evaluation has found in favor of the applicant with the following additional conditions of approval:

1. This approval is valid for six months.
2. Applicants must comply with all local, state, and federal rules.

3/10/04  
Date

  
Skip Baker, Planning Administrator

The sketch below is made solely for the purpose of assisting in locating said premises and the company assumes no liability for variations, if any, in dimensions and location ascertained by actual survey.

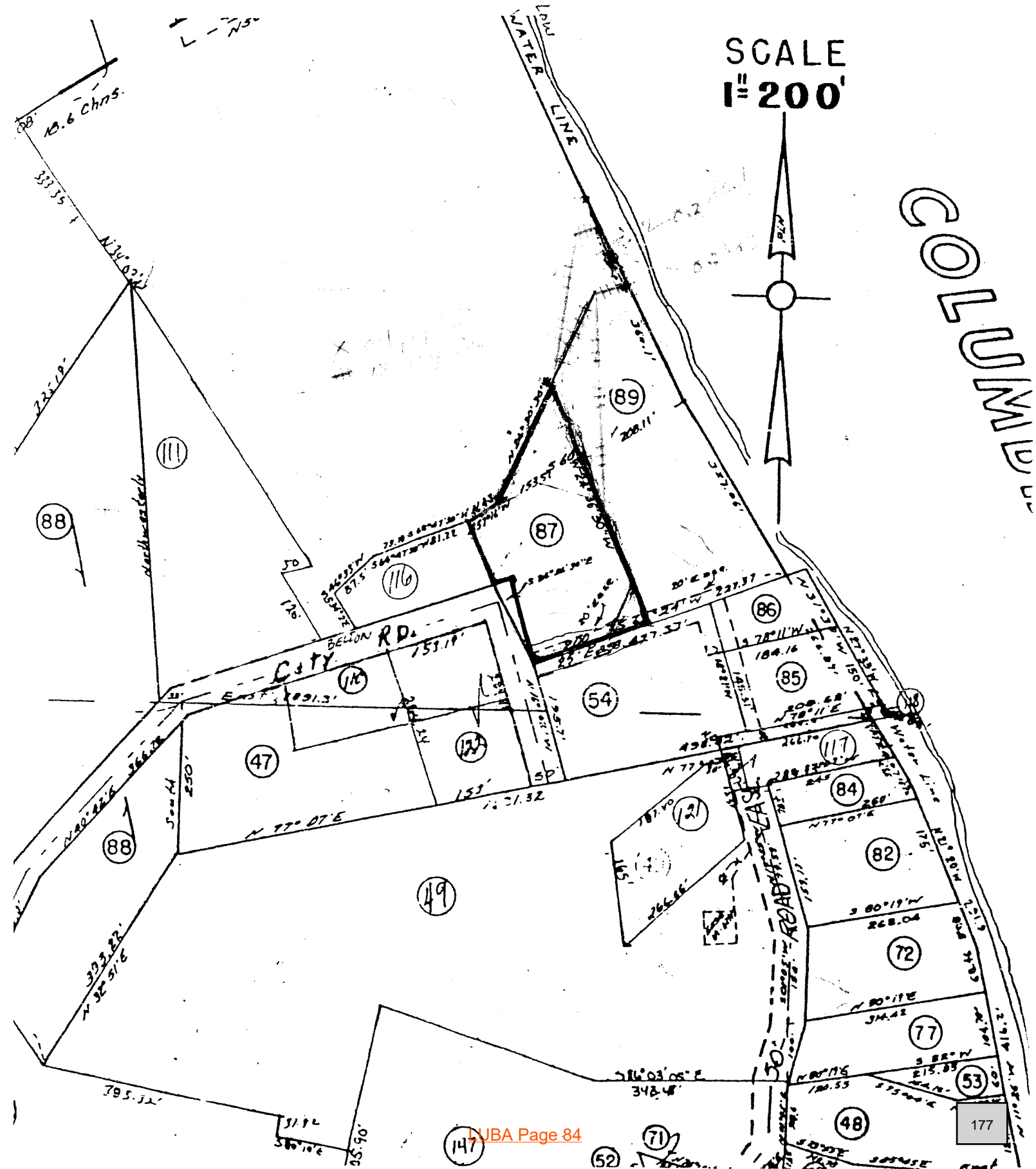
Item 1.

SCALE: 1" = 200'

34-5-1  **TICOR TITLE INSURANCE**

SCALE  
1" = 200'

COLUMBIA





Tracey Hill  
250 Belton Road  
St. Helens, OR 97051

RECEIVED  
JUN 16 2020  
CITY OF ST. HELENS

June 16, 2020

Re: Schlumpberger partition - appellant's post-hearing comments

Dear Planning Commission

Thank you for your patience and careful consideration of this matter. I bought my home at 250 Belton Road and moved there in April 2018. The Sorensens used to be my next door neighbors at 160 Belton Road until they sold their home to the Schlumpbergers in late 2019.

I want to defend several untrue statements made by the Schlumpbergers about me at the Planning Commission's June 9, 2020 hearing.

**False Statements about My Character:**

1) *The Schlumpbergers represented to the Commission that I went over to their property, showed them some papers and told them that the property they were on wasn't theirs.*

I have met the Schlumpbergers only once. On about 12/15/19, several days after I'd watched them use a trackhoe on the land, I walked over from my house and introduced myself to Ron and Andrew Schlumpberger who were in their driveway with the trackhoe. During the conversation I asked what they'd been up to on the property between the lake and the river as I'd seen a lot of activity in the past few months that appeared to encroach into the Sensitive Lands buffer and adjacent wetlands. They took me down to the beach while explaining they'd had a surveyor mark off their property and they were clearing the property. I asked if they knew about the 75 foot wetland protection zone. They responded that they did know about it, but were allowed to remove all of the blackberries as they were considered an invasive species and would be removing the rest of the huge stand of blackberries down to the water's edge because it was an invasive species. I told them about ducks I'd seen nesting in the brambles and knew of the heron that nested on the ground in that area. They responded that the land had been surveyed, the markers showed what was their property, and that they could destroy all Himalayan blackberry (despite that they grow down to the lake shore). Andrew Schlumpberger added that they were going to "grade" the beach so that he could make it "a real beach".

The Schlumpbergers representation that I told them the property isn't theirs simply is not true.

*2) Andrew Schlumpberger represented that I saw him on the road and told him to get off my property.*

The only time prior to the 06/09/20 hearing I had ever seen any of the Schlumpbergers was on 12/15/19 as described above. If I had seen him, I can assure you that, like everyone else I encounter on our road, I'd have happily chatted with him, offered him a bottled water and tried to keep my dog from jumping up on him. The neighbors who live in the area and testified at the hearing confirm that it is not my nature to behave rudely or crassly. In other words, no such encounter ever happened, and I am saddened that Andrew would say the things he did about me.

*3) Andrew Schlumpberger claims that I told some neighbors who were climbing down a path to the lake that they were trespassing on my property.*

I never told anyone – here or anywhere else – they were trespassing on my property. The only people I've ever seen climbing down a path to the lake are the folks who live across the street from me; occasionally they carry their kayaks down a steep path next to my property to access the lake. I, myself, have looked at buying a kayak to do exactly that! Other than those neighbors, I have never seen anyone else use that path. I have enjoyed genuinely pleasant exchanges with the kayaking neighbors and cannot imagine speaking rudely the way Andrew described me, not to mention tell people they were trespassing.

*4. The Schlumpbergers claim that someone told them that I stated I would draw out the partition process as long as possible.*

I have never made a statement of that kind and never would. Until I was accused of that at the hearing, it never even crossed my mind. I have endeavored to fit into my new neighborhood, and I have been warmly embraced as a new addition to the area by my neighbors and the community. It would be grossly out of character for me to entertain, much less speak, such a ridiculous notion.

What is true, however, is that I will strongly defend the septic drainfield that is recorded and runs with title to my property and encumbers the Schlumpberger property. I was very much aware of the septic drainfield that benefits my property when I read the preliminary title report prior to purchasing it. I understood clearly that the septic drainfield precludes incompatible development and preserves for me the right and opportunity to reestablish a septic drainfield in the future, just in case the STEP system ever fails or there is some other problem with the City's sewer system. The preservation aspect of the drainfield easement was equally important to me because I knew then, as I still know, that its existence preserves a measure of open space quality

in this neighborhood and limits development and density. Both are very important property rights that I acquired with my home.

In conclusion, in defense of my character, I can only presume that the Schlumpbergers are misrepresenting me in an attempt to make me seem unreasonable or difficult or unlikeable. I am none of those things - I genuinely enjoy people and have been tickled to death meeting and getting to know the people in my neighborhood. I hope to have a long future getting to know all of the people in my community. That said, I also want to defend my property right – my septic drainfield easement – because it is a property right I acquired with the purchase of my home that protects me in the unlikely event the STEP system fails and can't be repaired; it also protects the low-density aspect of this neighborhood and precludes incompatible development on the drainfield easement.

#### **The Septic Drainfield Easement:**

Before I bought my property, I knew it had the easement. I knew my house had been on a septic drainfield but that it had connected to a STEP system in the early 1990's. I discovered why we were on STEP and not conventional sewer. I learned that a STEP system is not as dependable as conventional sewer; occasionally the system fails – as the County Sanitarian told me “there are no guarantees.” I also found out that some of the houses on Belton are still on septic drainfields. I purchased my home with the easement as a known quantity – the easement is my insurance policy against losing my home in the event the STEP fails and can't be repaired economically. I truly hope I am never forced to use the easement but it was with careful forethought and a lot of due diligence that I made certain that the easement was valid and enforceable. I would not have purchased this house and invested my life savings without the easement.

I read the preliminary title work before I bought the house. The easement was clearly included in my purchase of the property. I also spoke to the title officer and confirmed that the easement exists, is valid, and enforceable. Also before I bought the house I spent time online and in person at the City offices where I learned about the area, the wetlands, riparian areas and protection zones. Since my house is situated immediately above Dalton Lake and adjacent to the Columbia River, I wanted to make sure that I understood the city's municipal codes, especially those concerning protected lands. It was, and is, important to me to be a good member of my community and to respect the ecosystem I moved here to enjoy.

I am mystified as to why the Schlumpbergers would claim they never knew about the easement or didn't believe that it precluded the incompatible development of a second house on their property. The Sorensons both testified at the hearing that they too recognized the existence and understood the legal implications of the septic drainfield

easement, and that they had discussed the easement with the Schlumpbergers. Additionally, I confirmed with the Schlumpbergers' title company, as well as my own, that the easement was recorded with title to both properties. Their title company further confirmed that the easement was part of the Schlumpbergers' title report. As of 04/23/20, the most recent deed recorded for 160 Belton Road shows the easement. Attached is a copy of the easement, recorded on 07/27/76.

### **Protected Lands:**

Last fall, I observed Andrew Schlumpberger carving a path through the brush and blackberry bushes from his property to the southeastern shore of Lake Dalton with a gas-powered device. He also used a trimmer or chainsaw to cut down the brush in a large area (which he later killed – see below). He told the Commission at the hearing that he was clearing the way for a survey of his property. Yet, no variance was applied for to create a path to the shore of the lake, and presumably a surveyor did not ask him to clear a path through protected wetlands and riparian zones.

Some weeks later, I observed Andrew Schlumpberger applying a spray over the area he had attempted to clear. Despite the protective measures clearly outlined in 17.40.035(c)(ii) and 17.40.040(6)(d), he clearly used chemicals to kill a large patch of Himalayan blackberries on the strip of land where the Schlumpbergers had hoped to build their house. (See 08/31/18 photographs of that land before destruction; and 12/06/19 photograph of the vegetation death a day or two after they sprayed that area. The comparisons speak for themselves.) The Schlumpbergers have testified before the Commission that they did not use herbicides, yet photographic evidence indicates otherwise.

The Schlumpbergers were told not to use power-assisted equipment within protection zones in accordance with SHMC 17.40.035 and 17.40.040. Yet, on 12/13/19 they brought down a trackhoe and dug up the poisoned brush as well as carved long divots in the beach. (See 12/13/19 photo of the tractor and resulting destruction. Also see the photograph taken 05/30/20, just a few weeks ago.) Very little grass or brush has grown back where it was unlawfully removed, despite their claims to the Commissioner that the blackberries have all grown back.

They were told that a *condition* of their partition approval (assuming it was approved) would be to comply with SHMC 17.132.025 Tree Plan Requirement. Despite knowing this, the weekend of 04/18/20, they took down 3 large, old trees with chainsaws. Just before the Planning Commission hearing they submitted a post-occurrence tree plan, which leads me to believe that their actions were conscious and calculated to avoid



compliance with the City's sensitive lands protections because they knew it was easier to beg forgiveness after the fact than to ask for permission before.

Around the time the Schlumpbergers made their initial application for partition, they were told by the City and the County to work with me regarding my easement as it presented a legal barrier to their partition plans. (See attached 02/13/20 email from the County to Andrew Schlumberger.) I found out about this only a few weeks ago. Despite being advised to try and work with me regarding my easement, they did not do so and I have never been approached by the Schlumpbergers. The only attempt they have made to communicate with me at all was after this appeal was filed when their attorney sent an email to my attorney stating that if I did not sign a release to my easement, the Schlumpbergers would sue me for quiet title in court. A copy of that email, dated 05/22/20, is attached to this statement. This was their first attempt to "work with" me. I have never been afforded the opportunity to sit down with them, listen to their proposals and explain the importance of my easement - an easement I purchased as part of my property. On 06/11/20, two days after the 06/09/20 hearing, their attorney sent a proposal to my attorney asking to "resize the septic easement" and, in exchange, "we'll agree to hold off filing a quiet title lawsuit." (See attached 06/12/20 email.) The "resized" septic drainfield the lawyer offered was simply a drawing that Ron Schlumpberger made to accommodate his son's proposed development and elimination of the "problem" that my drainfield easement presents. The "resized" septic drainfield Ron Schlumpberger offered was not prepared by anyone qualified to design a septic drainfield, nor has it been reviewed or verified by anyone with septic design or engineering expertise; it is purely his effort to eliminate my recorded easement and facilitate his son's development, nothing more. It eliminates the insurance policy I purchased with my property.

The Schlumpbergers bought their property and quickly set to preparing the land for future development, against applicable municipal codes as well as state wetland protection laws. They seemed to take these steps as if they already had a green light to proceed. They did not talk to me about my easement, choosing instead to view it as an irritation to be dealt with by threats of a lawsuit and bullying conveyed through their lawyer. They have discounted my neighbors whose views on Dalton Lake and the Columbia River have been protected and loved for many, many decades. They tried to wheedle my elderly neighbor, Kathleen Ward, out of even more property that has long been established as protected lands. For what reason? One can only assume from their actions to date that they intended to continue development and destruction of the land and ecosystem that is protected by the City's laws and the State of Oregon. The Schlumpbergers' actions leave no doubt that, if granted their partition, they will continue to bend the rules and step outside the lines as they have consistently done since purchasing their property. Real damage was done already in violation of the City's

regulations, and the applicants promise to do more if this partition is approved as requested.

The existence of my recorded drainfield easement, however, means that the Schlumpbergers lack legal access and a building pad for a second home on their property. If you grant this partition, even with the easement condition, you will be sending a clear statement that important steps and legal procedures can be skipped and there is no consequence to breaking the rules that were established to protect our beautiful area. Your approval will facilitate the applicants' circumvention of the rules and establishes precedence for their future actions, as well as any other developer's actions. Please adhere to the City's code requirements. This partition request is not ready for approval and should be denied until the applicants address these important preliminary steps, most notably my recorded drainfield easement, in a responsible and lawful way.

Please - protect property owners who have invested carefully in their homes and the land in reliance on the City code and legally protected property rights, only to have these rights taken by development. Protect our neighbors' community from further erosion of the previously protected wild lands and nature. Please protect our wildlife and the fragile ecosystem that surrounds this area. Please deny this partition.

Thank you.

Respectfully Submitted,



Tracey A. Hill



08/31/2020

Item 1.















05/30/20

Item 1.



## Jacob Graichen

**From:** Erin O'Connell <erin.oconnell@columbiacountyor.gov>  
**Sent:** Thursday, February 13, 2020 4:25 PM  
**To:** a\_schlumpberger@hotmail.com  
**Cc:** Jacob Graichen; Sue Nelson  
**Subject:** [Email from external sender] 160 Belton Rd septic system easement findings

Hi Andrew,

I was able to talk with Jacob Graichen and Sue Nelson at the City of St. Helens regarding your property at 160 Belton Rd and then the neighboring property at 250 Belton Rd. Your father also happened to come in and provided your email address for follow-up.

According to the sewer information Sue had, both properties appear to be connected to sewer. This was not verified in the field, which it is suggested that this get confirmed, however both utility billing records and the sewer extension as built document indicate that the properties are connected. I have enough information to feel comfortable advising that you should work with the neighbor to release the existing easement as it is no longer applicable. While the easement is no longer actually needed for the protection and maintenance of the septic system, it is a legal document that needs to be resolved between the respective owners. It is my understanding that the existing septic tanks were likely utilized in the step system to connect to sewer. Releasing the easement, which as of now is considered an encumbrance to your proposal, should open you up to be able to provide for the access and utility work needed to support partition. Good luck.

Erin O'Connell  
 Environmental Services Specialist  
 Columbia County  
 503-397-7222

**Service ~ Engagement ~ Connection ~ Innovation**

• PER 1976 ON-SITE  
 PERMITS -  
 SHARED DRAINFIELD  
 • UNDERGROUND UTILITY  
 REQ 10' SETBACK FROM  
 DRAINFIELD  
 • DRIVEWAY OVER DRAINFIELD  
 NOT ALLOWED

SEED SYSTEM - INSTALLED '89-'90  
 Houses connected to it from a  
 sometime after

# PROPOSED SUBSURFACE SEWAGE DISPOSAL SYSTEM

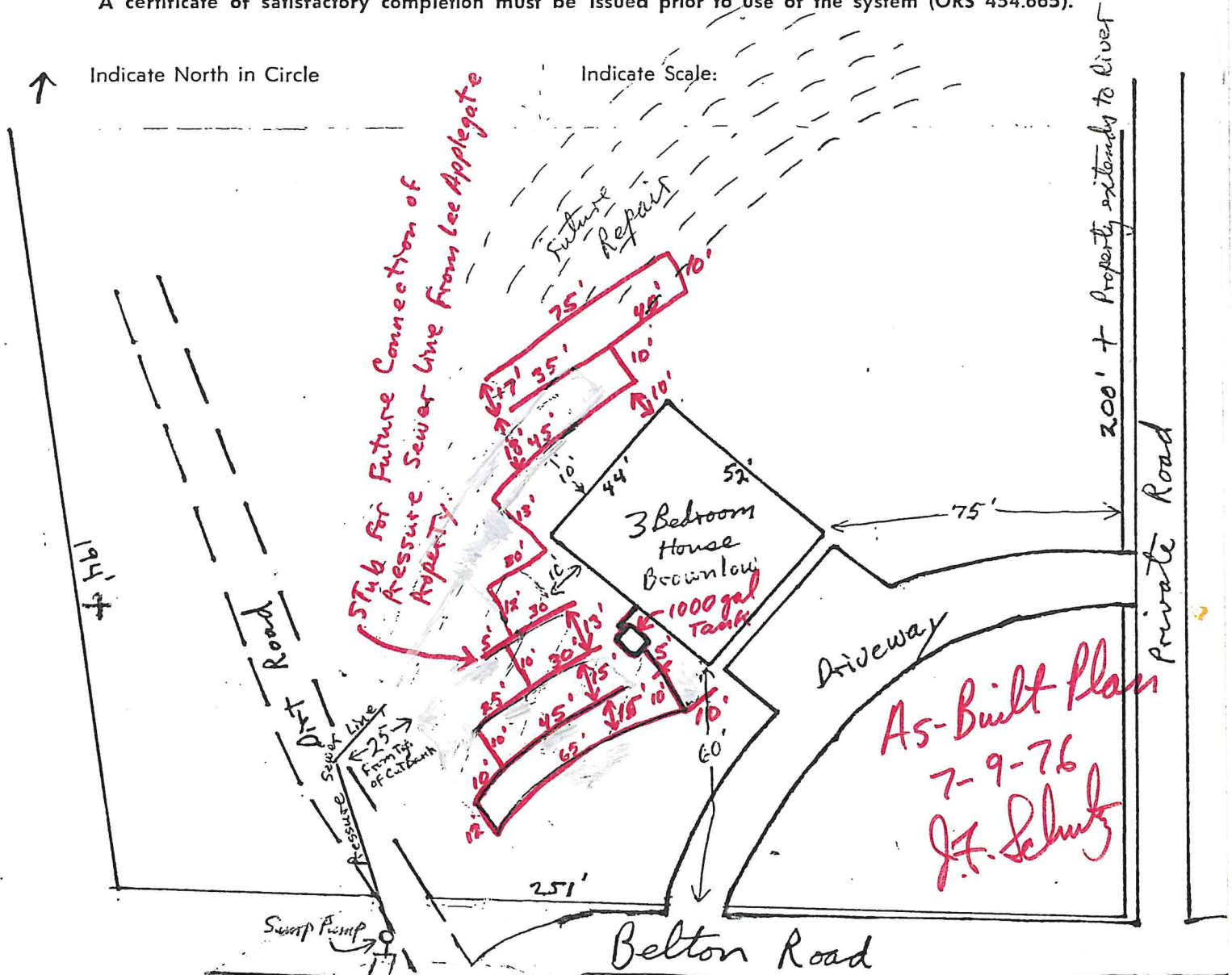
Item 1.

Owner Charles T. Brownlow + Lee Applegate Installer Bill Wood

T 5 N, R 1 W, Sec. 34, A.N. 5134-023-1100

Upon completion of construction, notify DEQ for inspection of the uncovered system.

A certificate of satisfactory completion must be issued prior to use of the system (ORS 454.665).



Date: \_\_\_\_\_ Applicant's Signature \_\_\_\_\_

## DEQ USE ONLY:

Application is: Approved ☒ Disapproved ☐

Bedrooms 5 Septic Tank \_\_\_\_\_ gal. Distribution Type Serial

Drainlines 1-005' 1-120' 1-45' 1-50' 1-2-65' Total Lineal Ft. 450 Trench Width 2'

Min. Trench Depth 24" Max. Trench Depth 30" Spacing Between Lines 10'

REMARKS: Applegate's 2 Bedroom house will pump effluent to Brownlow Property & use Lower portion of Serial System. Easement Required.



COLUMBIA COUNTY ASSESSOR  
3351-37-1

2-11  
2-01

5	1	34	2	3	1100
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CODE  
AREA  
NUMBER

TWP	RGE	SEC	1/4 1/16	PARCEL	TYPE	NO
MAP NUMBER				NUMBER	SPEC II	
TAX LOT NUMBER						

FORMERLY PART OF

LUBA Page 97

T5N R1W, WM.

Parcel 1: Beginning at a point which is N 4° 35' 30" W 1223.3 ft and East 1891.3 ft from the Northeast corner of "Rose Hill", Columbia County, Oregon, said point being on the left bank of the Columbia River; th along the left bank N 31° 38' W a distance of 266.87 ft; th S 69° 24' W a distance of 227.37 ft to the true point of beginning;

th N 24° 36' 30" W to a point on the most Easterly North line of City Ordinance # 1877 recorded Aug. 18, 1969 in Book 174 page 343 Deed Records of Columbia County;

th S 60° 21' W 153.57 ft;

th S 57° 16' W 46.43 ft;

th S 63° 47' 30" W 81.22 ft;

th S 64° 47' 30" W 73.10 ft;

th S 46° 33' W 87.50 ft;

th S 34° 02' E to the North line of 50 ft road easement described as parcel 3 in deed from L Bernice Brownlow et al to Theodore Mansavage et ux recorded Mar 14, 1968 in Book 168 page 513, Deed Records, Columbia County;

th N 69° 42' E along the North line of said 50 ft road easement to a point that is S 69° 24' W 200 ft and N 16° 02' W 6.3 ft and N 24° 36' 30" W from the true point of beginning;

th S 24° 26' 30" E to a point that is S 69° 24' W 200 ft and N 16° 02' W 6.3 ft from the true point of beginning;

th S 16° 02' E 6.3 ft;

th N 69° 24' E 200 ft to the true point of beginning, EXCEPTING that portion lying in said 50 ft road easement deeded to said Theodore Mansavage by said deed recorded March 14, 1968 in Book 168 page 513, Deed Records, Columbia County. RESERVING a non-exclusive right of way over the South 20 ft of the above described tract to be used for ingress and egress for grantors, their heirs and assigns.

PARCEL 2: Beginning at a point which is N 4° 35' 30" W 1223.3 ft and East 1891.3 ft from the Northeast corner of "Rose Hill", Columbia County, Ore, said point being on the left bank of the Columbia River; th along said low water line along said left bank N 31° 33' W a distance of 593.93 ft to the most Easterly Northeast corner of City Ordinance # 1877, recorded Aug 18, 1969 in Book 174 page 343 Deed Records of Columbia County; th S 60° 21' W along said most Easterly North line of said City Ordinance line 208.11 ft to the true point of beginning;

th S 60° 21' W along the said most Easterly North line of said City Ordinance line 153.57 ft;

th N 24° 30' 30" E to a point that is N 24° 36' 30" W from the true point of beginning;

th S 24° 36' 30" E to the point of beginning.

## COLUMBIA COUNTY ASSESSOR

5	1	34	2	3	1101
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*Item 1.*

CODE  
AREA  
NUMBER

TWP	RGE	SEC	1/4	1/16	TAX LOT	TYPE	NO
MAP NUMBER					NUMBER	SPEC INT	
ACCOUNT NUMBER							

FORMERLY PART OF T.L. NO: 1100

[illegible]

No. 633 - WARRANTY DEED (Individual or Corporate).

STEVENS-NESS LAW PUBLISHING CO., PORTLAND, OR. 972

## WARRANTY DEED

BOOK 206 PAGE 653

KNOW ALL MEN BY THESE PRESENTS, That Charles T. Brownlow

hereinafter called the grantor, for the consideration hereinafter stated, to grantor paid by

Lee C. Applegate

grantee, does hereby grant, bargain, sell and convey unto the said grantee and grantee's heirs, successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or appearing, situated in the County of Columbia and State of Oregon, described as follows, to-wit:

Beginning at a point which is North 4°35'30" West 1223.3 feet and East 1891.3 feet from the Northeast corner of "Rose Hill", Columbia County, Oregon, said point being on the left bank of the Columbia River; thence along low water line along said left bank North 31°38' West a distance of 266.37 feet; thence South 69°24' West a distance of 227.37 feet; thence North 24°36'30" West to a point on the most Easterly North line of City Ordinance #1877 recorded August 18, 1969 in Book 174, page 343, Deed Records of Columbia County, Oregon; thence South 60°21' West 153.57 feet; thence South 57°16' West 46.43 feet to the TRUE POINT OF BEGINNING of herein described tract, said point being the Northwest corner of tract described in Trust Deed recorded March 30, 1976 in Book 137, page 12, Mortgage Records of Columbia County, Oregon; thence South 68°47'30" West 81.22 feet; thence South 64°47'30" West 73.10 feet; thence South 46°33' West 87.50 feet; thence South 34°02' East to the North line of 50 foot road conveyed to City of St. Helens by deed recorded October 12, 1971 in Deed Book 184, page 11; thence North 69°24' East along the North line of said 50 foot road to the point of intersection with the West line of tract described in Mortgage Book 137, page 12; thence North 24°36'30" West along said West line to the point of beginning.



**Jacob Graichen**

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**From:** Sue Nelson  
**Sent:** Thursday, February 13, 2020 12:35 PM  
**To:** Erin O'Connell  
**Cc:** Jacob Graichen  
**Subject:** Belton Road STEP system  
**Attachments:** S-471.pdf; RE: Sewer accounts

Hi Erin,

Per our conversation earlier today regarding the Belton Road STEP system, the City's records indicate that the two properties in question, 160 Belton Road and 250 Belton Road, are connected to the public sewer via a STEP system. This conclusion is based on utility records and has not been confirmed by any field testing.

Attached is a copy of a recent email from our Utility Billing Department confirming the billing status of several addresses adjacent to the STEP system. It shows that both 160 and 250 Belton Road are charged for sewer and water service.

Also attached is a copy of the as-built plan sheet from the STEP system construction. It shows a total of three properties being connected to the pressure main and, although the plan sheet does not indicate addresses, two of the properties on the plan correspond with the locations of 160 and 250 Belton Road. See the excerpt below from the City's GIS system.

This is pretty much all the information I have available on this STEP system and the connections. Please let me know if you have any questions.

Thank you,

*Sue Nelson, P.E.*

Interim Public Works Director  
503.397.6272, x 123  
suen@ci.st-helens.or.us





## Jacob Graichen

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**From:** Jamie Edwards  
**Sent:** Tuesday, August 06, 2019 12:39 PM  
**To:** Sue Nelson; Dawn Richardson; April Messenger  
**Subject:** RE: Sewer accounts

Hi Sue,

Here is what each property is currently being billed; please let me know if we need to make any changes.

565 Grey Cliff Drive (Gillen)	Water only
575 Grey Cliffs Drive (Hough)	water only
585 Grey Cliffs Drive (Parker)	water & sewer
80 Belton Road (Dickinson)	water only
90 and/or 100 Belton Road (Nunn)	100 Belton Rd; water only
105 Belton Road (Belcher)	water & sewer
140 Belton Road (Ward)	water & sewer
160 Belton Road (Sorenson)	water & sewer
250 Belton Road (Hill)	water & sewer
263 Belton Road (Barker)	no services
265 Belton Road (Barker)	water only
371 Belton Road (Dery)	water & sewer
381 Belton Road (Snow)	water & sewer

Thanks,

*Jamie Edwards*

Utility Billing Specialist

City of St. Helens

503.366.8210

Fax: 503.397.3490

[www.ci.st-helens.or.us](http://www.ci.st-helens.or.us)




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**From:** Sue Nelson  
**Sent:** Tuesday, August 06, 2019 11:40 AM  
**To:** Jamie Edwards; Dawn Richardson; April Messenger  
**Subject:** Sewer accounts

Hello,

I am trying to track down if certain properties are hooked up to the City sewer. Can someone please check to see if the following addresses pay for sewer on their utility bills?

565 Grey Cliff Drive (Gillen)  
575 Grey Cliffs Drive (Hough)  
585 Grey Cliffs Drive (Parker)  
80 Belton Road (Dickinson)  
90 and/or 100 Belton Road (Nunn)  
105 Belton Road (Belcher)  
140 Belton Road (Ward)  
160 Belton Road (Sorenson)  
250 Belton Road (Hill)  
263 Belton Road (Barker)  
265 Belton Road (Barker)  
371 Belton Road (Dery)  
381 Belton Road (Snow)

Thank you very much!

*Sue Nelson, P.E.*

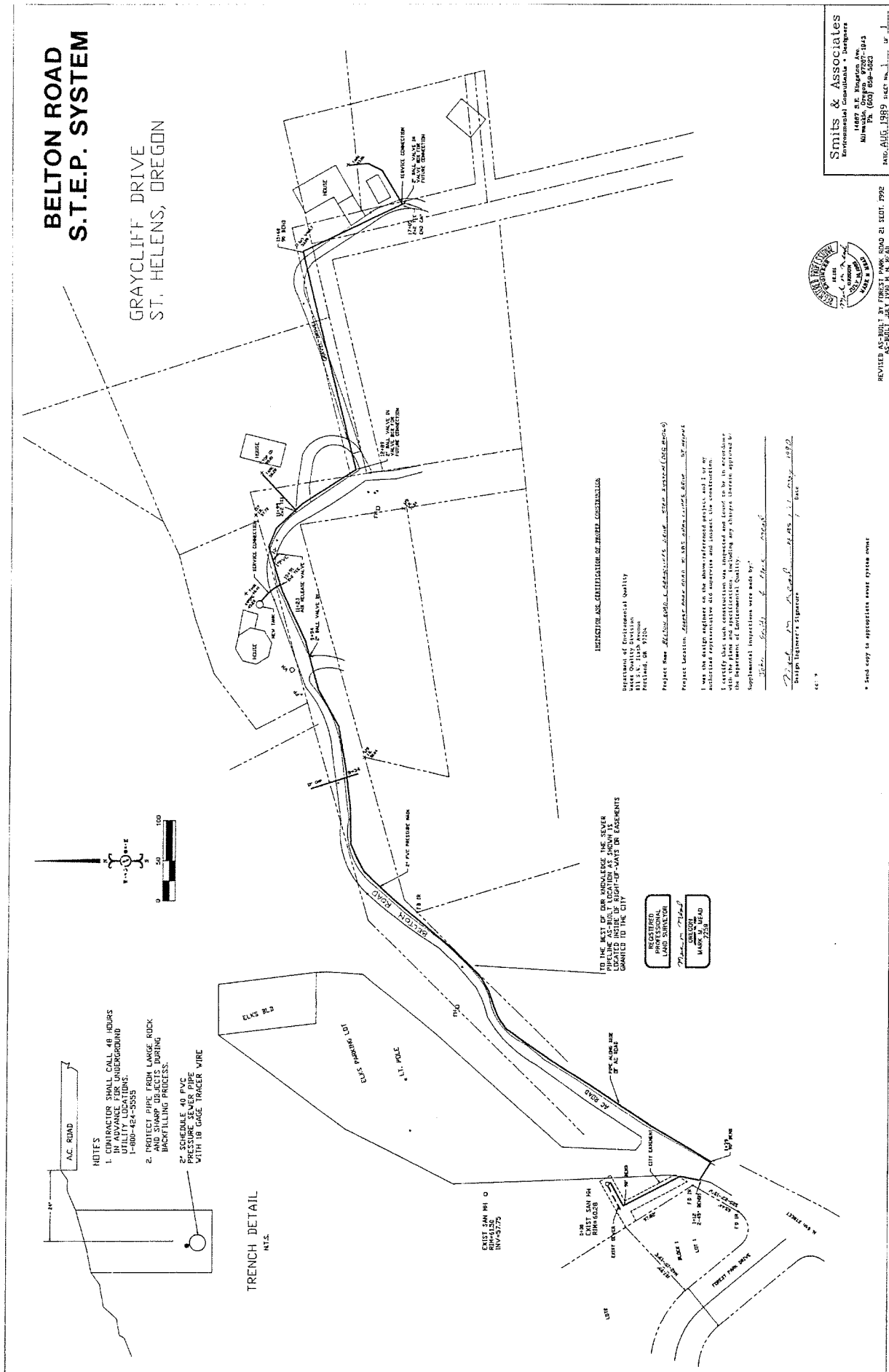
Interim Public Works Director

503.397.6272, x 123

[suen@ci.st-helens.or.us](mailto:suen@ci.st-helens.or.us)







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**From:** Jeffrey Seymour <[jeffseymour1@earthlink.net](mailto:jeffseymour1@earthlink.net)>  
**Sent:** Tuesday, May 19, 2020 8:44 AM  
**To:** Daniel Kearns <[dan@reevekearns.com](mailto:dan@reevekearns.com)>  
**Subject:** Schlumberger appeal - easement issues

Daniel –

Thanks for taking the time to speak with me Friday afternoon about the subject appeal. I'm following up concerning the easement issues.

Item 1.

In the 1990's, our clients' predecessors both hooked up their sewage systems to the city's sanitary sewer system via a STEP system. They disconnected the piping to the drain field, and destroyed the drain field. It's been filled with sand and gravel since then.

Our position is that the easement on Tracey Hill's property was extinguished by destruction in the process. Additionally, our clients' predecessors abandoned the easement following its destruction, and a number of large trees are growing in the old drain field area.

Finally, I've included sections 13.14.060 and .070 from the St Helens Municipal Code and highlighted them. These require all residences in the city with access to city sewer to hook up to it, and only allows onsite wastewater treatment if public sewer is not available. Here, your client's property has been hooked up to city sewer for decades, and city code will not allow her to use an onsite wastewater treatment system again.

We would like to resolve this amicably, by agreement between our clients. To do so, I will prepare an Easement Release agreement that can be signed, notarized and recorded.

If your client is unwilling to do this, then I think our only avenue available is to file a suit to quiet title in the disputed easement. We'd like to avoid the time and expense involved. Under the circumstances, I think any defense of our claim would be meritless.

Thanks for reviewing this and getting back to me at your earliest convenience.

Jeff

**Jeffrey S. Seymour**  
Attorney at Law

4504 SW Corbett Ave., #200  
Portland, OR 97239  
(503) 477-9214 phone

(503) 222-0693 fax  
[jeffseymour1@earthlink.net](mailto:jeffseymour1@earthlink.net)  
[www.jeffseymourlaw.com](http://www.jeffseymourlaw.com)



---

**From:** Jeffrey Seymour <[jeffseymour1@earthlink.net](mailto:jeffseymour1@earthlink.net)>  
**Date:** Friday, June 12, 2020 at 2:41 PM  
**To:** Daniel Kearns <[dan@reevekearns.com](mailto:dan@reevekearns.com)>  
**Subject:** RE: drain field easement

Hi Dan –

Here's what I got from Ron Schlumpberger in response to your email. The plan was not prepared by a sanitary consultant, but by Ron, for now. He has installed several septic systems in properties he's owned, and his brother is a registered professional engineer who does environmental work. He is having a local septic contractor look at the site and provide his comments about its suitability for the drain fields.

Ron's comments are as follows:

The total easement encompasses the same area the original drain field and much more. So if your stating that the old piping or leach field lines are still in place and have not been dug up or destroyed than they would still be there.

Grant it they are over 20 yrs old and the likelihood that they are still operable is very slim to nil at best. But the main question the county sanitation asks is if the soil is compatible to a leach system and normally some test holes would be dug to determine that. But being that perk holes were dug previously and allowed the leach field to be in that area would confirm that the soil in that area is suitable for a leach system.

The other factor they look at is there enough area, the prior system used aprox 2500 to 3000 sq ft which is more that adequate area for a 2 bedroom dwelling, including a repair area it would be 5000 to 6000 sq ft max. We are showing over 10,000 sq ft that does not include any of the protection zone or steep terrain that would prohibit any system from being developed.

The 3<sup>rd</sup> factor is terrain, slope, setbacks, etc which I already eluded to above. So to confirm the best possible place to put a leach system would be in the area that it was previously already approved, as it met all the conditions previously and all likelihood would meet them again, along with the fact there are many more options available now a days than just a standard gravity flow leach system.

I'll let you know what the septic contractor says.

We're offering this proposal as a way of settling things and moving on. We are not changing our position that the easement has been extinguished, and we'll go to court over that if we have to. But, I don't want to sue Tracey over this, and I'd like our clients to patch up their differences and be good neighbors.

Thanks for getting back to me.

Jeff

**Jeffrey S. Seymour**  
Attorney at Law

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Portland, OR 97239  
(503) 477-9214 phone

(503) 222-0693 fax  
[jeffseymour1@earthlink.net](mailto:jeffseymour1@earthlink.net)  
[www.jeffseymourlaw.com](http://www.jeffseymourlaw.com)

## Notes:

Property Owners:  
Andrew and Lindsay  
Schlumpberger  
160 Belton Road  
St. Helens, OR 97051

Tax Map Parcel No.:  
5134-000-00201  
5134-BC-01100

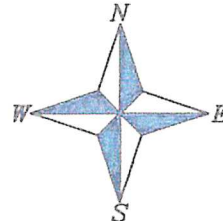
Zoning: R10

Wetland Delineation by  
Wetland Solutions Northwest, LLC

Sensitive Lands Buffers were  
measured along the slope

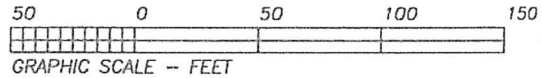
Columbia River

PLANNER  
NOTES  
COPY



Scale: 1"=50'

CF&SF:19054S



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JULY 26, 1985  
DAVID E. REYNOLDS  
2157

RENEWAL DATE: 12-31-2020

Reynolds  
Land Surveying, Inc.  
32990 Stone Road  
Warren, Oregon 97053  
(503) 397-5516

Preliminary Partition Plat  
For  
Andrew & Lindsay Schlumpberger  
Situated In The N.W. 1/4  
Section 34, T.5N., R.1W., W.M.  
City of St. Helens  
Columbia County, Oregon  
January 21, 2020

Dalton Lake  
EDGE OF WATER

Parcel 2  
48060 SQ.FT.  
22565 SQ.FT. OUTSIDE  
OF SENSITIVE LANDS

Parcel 1  
45900 SQ.FT.  
43010 SQ.FT. OUTSIDE  
OF SENSITIVE LANDS

HOUSE

GARAGE

Belton Road

200'

STREET GRASS  
NO GRAVEL  
WEEK

ACCESS  
EASEMENT?  
2005 16502

20' ROAD  
EASEMENT  
BOOK 179  
PAGE 428

WATER PRESERVATION  
92-6811

APPROX 100'  
W/ADJACENT  
PROPERTY

Proposed Drain Field  
April 12, 2008



## EASEMENT AGREEMENT

BOOK 208 PAGE 404

THIS AGREEMENT, made this 27<sup>th</sup> day of July, 1976, by and between CHARLES T. BROWNLOW, grantor, and LEE C. APPLIGATE, grantee;

WHEREAS, grantee is the owner of the following described real property in Columbia County, Oregon, to-wit:

Beginning at a point which is North 4°35'30" West 1223.3 feet and East 1891.3 feet from the Northeast corner of "Rose Hill", Columbia County, Oregon, said point being on the left bank of the Columbia River; thence along low water line along said left bank North 31°38' West a distance of 266.37 feet; thence South 69°24' West a distance of 227.37 feet; thence North 24°36'30" West to a point on the most Easterly North line of City Ordinance #1877 recorded August 18, 1969 in Book 174, page 343, Deed Records of Columbia County, Oregon; thence South 60°21' West 153.57 feet; thence South 57°16' West 46.43 feet to the TRUE POINT OF BEGINNING of herein described tract, said point being the Northwest corner of tract described in Deed Book recorded March 30, 1976 in Book 137, page 11, Mortgage Records of Columbia County, Oregon; thence South 64°47'30" West 81.22 feet; thence South 64°47'30" West 78.10 feet; thence South 46°33' West 87.50 feet; thence South 34°02' East to the North line of 50 foot road conveyed to City of St. Helens by deed recorded October 12, 1971 in Deed Book 184, page 11; thence North 69°24' East along the North line of said 50 foot road to the point of intersection with the West line of tract described in Mortgage Book 137, page 12; thence North 24°36'30" West along said West line to the point of beginning.

The grantors, in consideration of ONE DOLLAR (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, do hereby grant and convey to the grantees, their heirs, successors and assigns, a non-exclusive easement, subject to liens and encumbrances of record, in the following described real property in Columbia County, Oregon, to-wit:

That part of the following described tract lying Northerly of the Easterly extension of the North line of Sixth Street as conveyed to City of St. Helens by deed recorded October 12, 1971 in Deed Book 184, page 11:

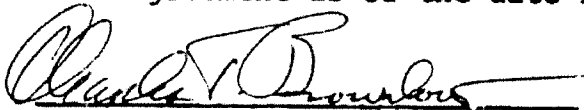
BOOK 208 PAGE 405

Beginning at a point which is North 4°35'30" West 1223.3 feet and East 1891.3 feet from the Northeast corner of Rose Hill, Columbia County, Oregon, said point being on the left bank of the Columbia River; thence along low water line along said left bank North 31°38' West a distance of 266.87 feet; thence South 69°24' West a distance of 227.37 feet to the TRUE POINT OF BEGINNING; thence North 24°36'30" West to a point on the most Easterly North line of City Ordinance #1877 recorded August 18, 1969 in Book 174, page 343, Deed Records of Columbia County, Oregon; thence South 60°21' West 153.57 feet; thence South 57°16' West 46.43 feet; thence South 24°36'30" East 251.73 feet; thence South 16°02' East 6.3 feet; thence North 69°24' East 200 feet to the point of beginning, EXCEPT THEREFROM that portion lying within 50 foot road conveyed to City of St. Helens by deed recorded October 12, 1971 in Deed Book 184, page 11,

for the construction, maintenance, use and repair of an individual water-carried subsurface sewage disposal system (hereinafter called "system") appurtenant to the above-described property of grantees.

Grantors, for themselves and their heirs, successors and assigns, covenants and agree to and with the grantees, their heirs, successors and assigns, that the above-described property of grantors shall not be used for any purpose detrimental to said system or contrary to laws and rules of governmental agencies applicable or related to said system.


IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first hereinabove written.

  
Charles T. Brownlow (Grantor)

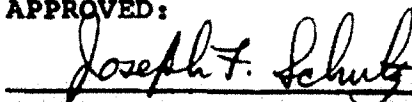
  
Lee C. Applegate (Grantee)

STATE OF OREGON )  
County of Columbia ) ss.  
July 27, 1977 )

Personally appeared the above-named Charles T. Brownlow, grantor, and Lee C. Applegate, grantee, and acknowledged the foregoing instrument to be their voluntary act. Before me:

  
Notary Public for Oregon  
My commission expires: 9-14-77

APPROVED:

 LUBA Page 112  
Sanitarian

Date July 28, 1976



204 208

BOOK 208 PAGE 406

7312  
STATE OF OREGON  
COLUMBIA COUNTY  
RECORDED OR FILED  
OCT 13 3 16 PM '76  
BOOK 208 PAGE 404  
ROY A. NELSON CO CLK  
*[Signature]* DEP.

*Lee Applegate  
P.O. Box 1  
St. Helens, Or.*



Dear Planning Commission,

When .2 acres of beach property was sold from my mother, Kathleen Ward, to the Sorensens in 2004, it was strictly at their request to maintain and preserve an unencumbered view for their home at 160 Belton Road. The City Planner at that time, Skip Baker, recorded findings that both lots have significant topographic constraints due to steep slopes and wetland/repairion protection zones that **future divisions are unlikely at best**. Also, under special previsions, the finding recorded said the lots sizes, widths, shape, and orientation are such that **no change in the possible number of lots is anticipated**. Because of these findings by the City Planner, neither Sorensens nor Wards had any reason to question the truth of these statements, and therefore believed, in good faith, that the beach property would remain in its natural state. Both parties are devastated at the thought of construction taking place where none was intended or indicated.

I've included photographs of the two trees brought up at the June 9th meeting. I do not have a date for the oldest black and white photo. The next two pictures are dated November 1979 and in the 40 years since, these two trees have stood the test of time, continued to flourish, and deserve to remain standing. The most recent pictures, taken from the house at 160 Belton Road, show these 150 year old trees in their current situation, which I hope can remain.

Finally, I think it's sad that the purchasers of this beautiful home are willing to damage its view along with those of two other homes. My mother pays dearly (upwards of \$20,000 per year) in property taxes to enjoy the view from her home which she loves. The new construction will seriously intrude upon the views of the surrounding houses, including the current one at 160 Belton Road. This is not a housing development, and the new owners should be able to make 160 Belton Road their happy forever home. It's a beautiful place, they are nice people, and we would welcome them to do so.

Please deny the partition and allow all three homes to remain as they were intended

Thank you for your consideration,

Robin Nunn

RECEIVED  
JUN 16 2020  
CITY OF ST. HELENS









**JEFFREY S. SEYMOUR**  
**ATTORNEY AT LAW**

4504 SW CORBETT AVE, #200  
PORTLAND, OR 97239  
TEL (503) 477-9214  
E-MAIL [jeffseymour1@earthlink.net](mailto:jeffseymour1@earthlink.net)

June 15, 2020

RECEIVED  
JUN 15 2020  
CITY OF ST. HELENS

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

Attn: Jacob Graichen, Planning Director

Subj: Partition PT.1.20 (Schlumberger); applicants' additional evidence

Jacob:

At the end of the June 9, 2020 Planning Commission hearing on the subject appeal, you said the hearing participants could submit additional evidence for the record. I am providing a document the Applicants prepared, which includes narrative and photos related to 3 issues:

1. Belton Road width is satisfactory
2. Protection and preservation of vegetation and wildlife on property
3. Location of driveway to parcel #2

Thank you for providing this to the Planning Commission members.

If you have any questions, please get in touch.

Sincerely,

*Jeffrey S. Seymour*  
Jeffrey S. Seymour

Enclosure

Copy: Client  
D. Kearns, attorney

### Evidence supporting a skinny street

Belton Road is the main access road to a very unique area of St. Helens. This road has had a non-conforming width for many years, even when the city paid to pave a section of it, they did not increase the shoulder or make any safety improvements to the 90 degree turn. The topography of this road consists of hard bedrock, steep terrain, and a nearby wetland. Although this topography makes it challenging in spots, it is not known to be a problem for neither the residents of Belton road nor the first responders that provide protection and service to the area. Unlike Grey Cliff road, the adjacent road over the rock bluff, Belton road has several regions of the roadway where the width widens and safely allows two vehicles to pass or turn around if needed. We believe these regions help contribute to the roads safety and agree to the conditions set forth by the City Planner, to enhance the road by providing the required 24x30 turnout. The new turnout will be located on the 90 degree turn and another two will naturally occur as we meet driveway requirements. These regions are highlighted in the provided survey map to better visualize.

To request any further improvements to Belton Road would be an unreasonable request due to the reasons stated above and the fact we are only adding one additional dwelling, the same amount as an ADU would put on the public services. Lastly Belton Rd is a dead end road with the possibility of only one or two additional dwelling units to be added in the future. The road has little traffic, less than 100 average trips per day, and its residents drive at a slower speed and maneuver the roadway with respect to the neighboring homes.

**No outlet sign posted by the Elks Lodge, forewarning travelers that Belton road has no through access.**





We have provided the following photos to help you better visualize Belton road and the different areas in question on both proposed parcels one and two.

Steep slope with rock wall terrain on left side of road on 90 degree turn leaving applicant property.



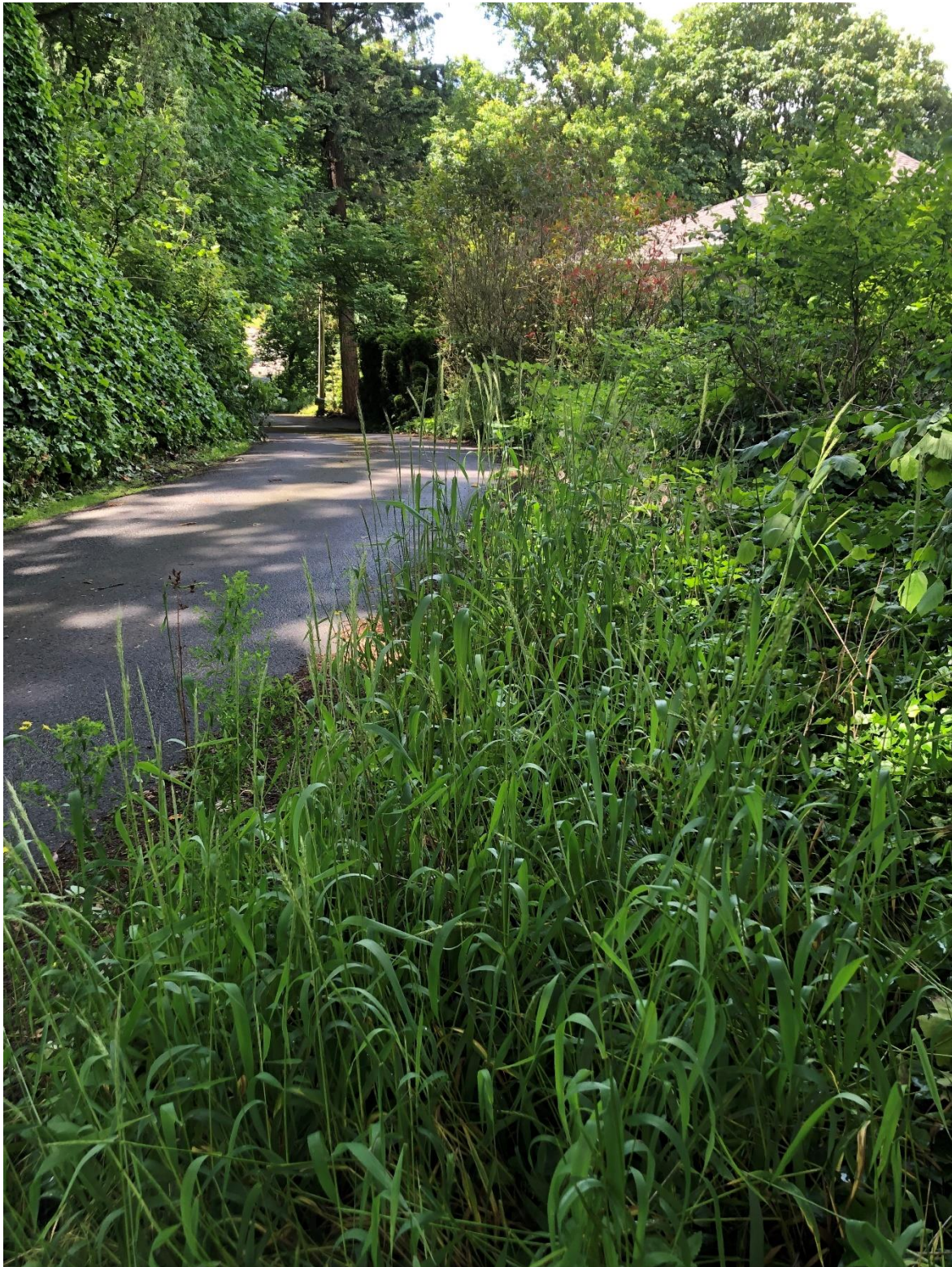


Location of proposed turnout on 90  
degree turn on Belton rd.





**View from proposed turnout off 90  
degree turn to increase visualization  
down Belton rd.**





Looking up Belton road going  
towards applicant's house. Photo  
illustrating steep terrain with mature  
trees on right side of roadway.





Same location as previous photo,  
now on the left side of Belton road  
going up to applicant's house. Wet  
land D-16 (Dalton Lake) near  
roadway





Same location as previous photo,  
now illustrating the close proximity  
of the roadway and steep terrain  
down to D-16 wetland (Dalton Lake).





Belton road looking up in the  
direction of the applicant's house

(Widening of narrow road visible)  
(Road changes from 11ft to 18 ft.)





**Second view of Belton road.**

**Widens on both ends with good  
visualization of oncoming traffic.**





**Example of large truck using turnout  
to back up on Belton road.**



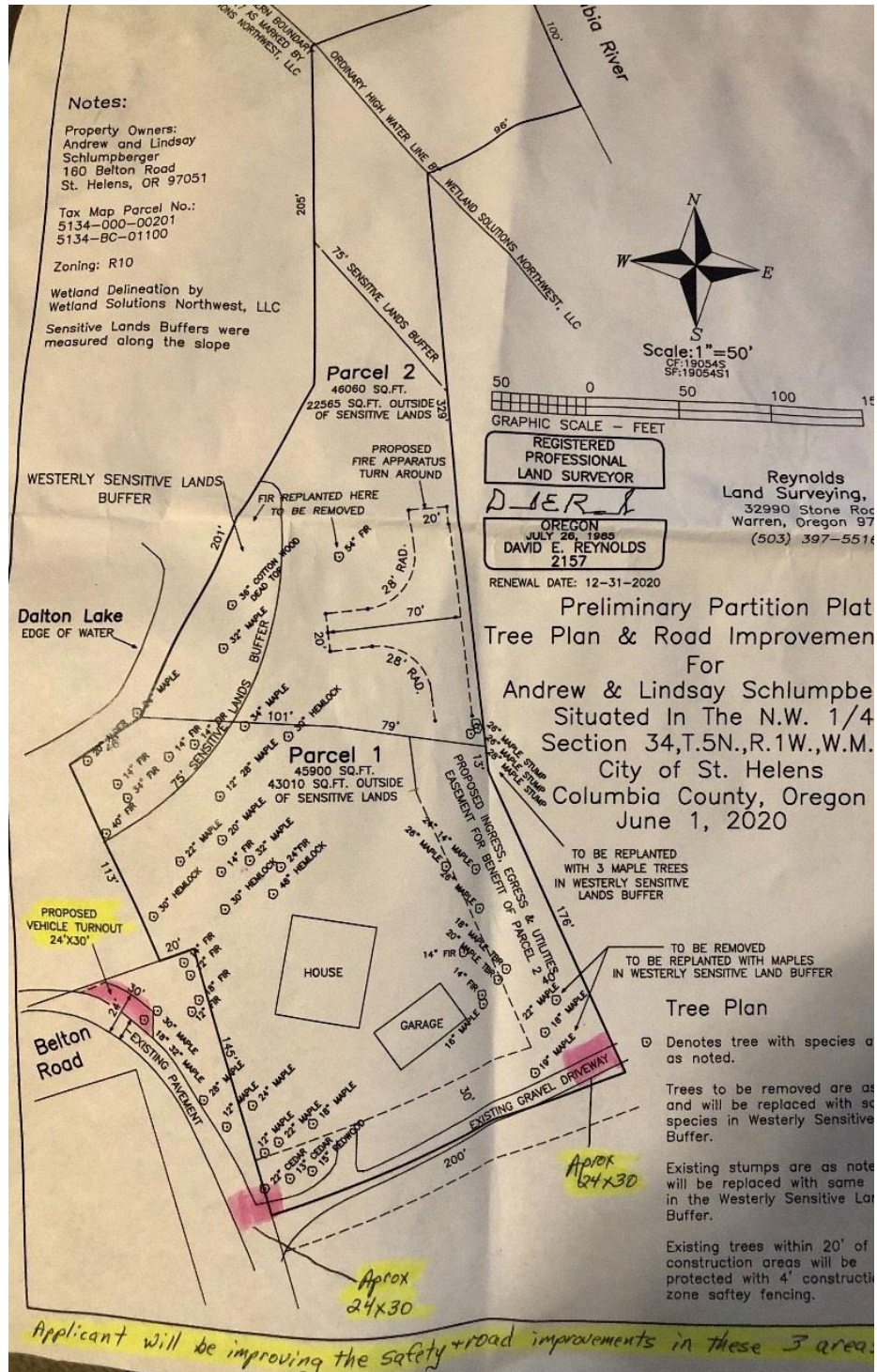
**Belton Road intersecting with Grey  
Cliffs Dr.**

**(Arrow indicates location of parcel  
two driveway)**





**Survey map illustrating the proposed  
turnouts**



## Evidence that we are protecting and preserving nature

During the meeting that took place on June 9th several concerns regarding protecting nature were discussed. These concerns included, potential eagles perching on nearby trees and the maintenance of vegetation near and around protected wetlands. The tree that was discussed in the meeting was a large fir tree that stands in the middle of parcel two at the edge of the beach. The location of this particular tree is well outside of the 75 foot protection zones of both the D-16 (Dalton Lake) and the D-17 (Columbia River). The concern for this tree was based on the occasional perching of eagles and other birds and that its removal may decrease the presence of these birds in the area. While it is true that eagles and other birds occasionally perch in this tree we do not feel it is fair to say that its removal would prevent any bird from returning to the area, due to their being no visible eagles nest in the tree as well as there being many other large trees along the water's edge that are also frequently visited by these birds. To help illustrate this we have provided a photo of the large fir tree in question as well as a photo looking down river at several other large trees near the water's edge. We feel confident that this photo accurately shows that an eagle's nest is not present in this tree as they are very large in size and fairly obvious from a distance. In fact we can clearly see a nest up river on the Washington side in a large maple tree. Removal of this tree is a safety concern for parcel two, as it is very large and could potentially be very harmful if it came down in the future.

The second concern that was discussed in the meeting was the maintenance of vegetation near and around the protected wetlands. This topic became personal to us in the meeting when we were falsely accused of spraying pesticides on blackberry bushes near the wetlands on the beach. We do admit that we trimmed the bushes with a hand trimmer and we do have photos both before and after to illustrate this. We do not currently nor have we ever used pesticides on this property. We purchased this property in October of 2019 at the end of a dry summer. The grass and vegetation on the beach is commonly dry at that time due to the time of year and the heat of the sun on the region. We believe that is why the vegetation appeared brown in color as the appellant described and as her photo suggested. That being said, while we fully intend to preserve all wetlands and protection zones we also want to do the necessary maintenance on our property to ensure its safety and the safety of our neighbors from fire and pest. After completing the survey with the nature specialist Staci, she confirmed that blackberry bushes are considered an invasive species and that they can be removed with a hand trimmer on both protected and not protected zones without a permit. After walking the beach and the nearby wetlands, Staci was able to mark the one native plant on the beach. This native plant is an oak tree and is located just outside our property line further down the beach. After receiving the notice from the city we have complied and stopped all work and maintenance of the vegetation. We have provided a photo to illustrate the lack of maintenance and just how invasive and quickly they grow.

Photo illustrating approximate location of future house for parcel two, and integrity of neighboring views.

Yellow arrow- location of appellant's house located high on bluff

Red arrow- location of Ward's house, view unaffected

Green arrow- approximate location of house for parcel two





**View from beach towards Dalton  
Lake illustrating large overgrowth of  
blackberries and grass.**

**(Region where appellant claimed  
pesticides were used)**



Fir tree in question on parcel two





Large trees at water's edge





**View towards beach before  
blackberries were trimmed and  
before tractor was used.**



After blackberries trimmed with  
hand trimmer





Beach region after the tractor was  
used to gather trimmed blackberry  
bushes.

(Dirt visible on hillside  
Red arrows-indicate protection zone  
border from D-17, tractor did not  
extend into protection zone)





Evidence supporting that the driveway cannot be moved to the opposite side of the property

Addressing the concern of moving the proposed driveway for parcel two to the opposite side of the property, is limited for several reasons. These reasons include the location of many mature trees, steep terrain, protection barrier from D-16 (Dalton Lake), and the location of the current holding tank for the house on parcel one. As illustrated in the photos and survey map that have been provided, 7-8 large mature trees would need to be removed in order to provide enough room for the appropriate driveway width down to parcel two, this number is double the number of trees that would be removed by simply moving the driveway to the other side of the property like it is proposed in our original application.

The second obstacle we are faced by moving the driveway is the steep terrain. As you can see in these photos, the grade on this side of the property is steep and would require several curves in the road to accommodate natural barriers. This creates more challenges for us when the opposite side of the property is much easier with its long straight stretch of roadway with a more gradual grade.

The third obstacle is the protection zone from the nearby D-16 (Dalton Lake) wetland. Illustrated by the stake seen in the provided photo, the 75 foot protection zone from Dalton Lake extends up the hillside and would require us to move the driveway several feet over closer to the current house on parcel one. While there is room for this, it is also the reason so many mature trees would need to be removed as it pushes the driveway directly into several larger groupings of trees.

The final reason moving the driveway for parcel two is not reasonable, is the location of the current holding tank for the house on parcel one. Moving the driveway to this side of the property would place construction of the driveway right next to the holding tank, which could present risk to the integrity of the holding tank during construction.

Finally after consulting with Dave Reynold's surveying, he confirmed that the safest and most reasonable location for the driveway for parcel two is where it is located on our original application.

**Photos illustrating the challenges of moving the driveway to the opposite side of the property.**

**Steep terrain is visible as well as barrier from nearby wetland.**

**Red arrow- illustrates a stake marking the D-16 protection zone border**





Because of the protection zone, the driveway would be pushed to the left towards the large groups of mature trees.





My name is Hunter Blashill and I am the son of the appellant, Tracey Hill. I've lived at the 250 Belton Rd. property from its purchase until March of this year when I started attending OSU. I continue to visit the property on breaks and holidays. I'm writing in opposition to the proposed partition of the property at 160 Belton Rd. on three grounds: Concern over the impact of the partition and development on the trees and sensitive lands it borders, the suitability of the access road to facilitate the additional traffic of the construction and future residence of another home, and finally the issue of the shared easement between the two properties.

In regard to the shared easement, I understand that the primary issue for the commission is whether the state of the easement affects the fate of the partition. We have direct evidence indicating the Schlumpbergers' knowledge of the existence of the easement from the beginning when they acquired the 160 Belton property. This evidence comes from both the title companies involved in the sale as well as the testimony offered by Mr. Sorenson on the June 9<sup>th</sup> meeting. Rather than contacting my mother to try and hash things out before it became an issue, they first hoped she wouldn't notice, and then tried to bully her into going away. Instead of seeking to resolve things amicably, they simply threatened to sue. Please rest assured that in the event of a lawsuit, the facts at hand and the prior case law ensure that the legal validity of the easement *will* be upheld. I ask the commission to deny the partition because the fate of the easement will absolutely affect the validity and development of the partition.

With respect to the second issue of the sensitive lands impact and the removal of trees prior to undergoing a tree plan, Ron Schlumpberger seems to have ample experience in developing residential properties. In addition, he appears to have connections with professionals in that field of expertise. And yet, we are being told that Andrew Schlumpberger, under his father's guidance, was ignorant of the sensitive lands buffer and the need for a tree plan. The Schlumpbergers authorized heavy equipment to remove vegetation well within the sensitive lands buffer. The Schlumpbergers authorized the removal of several large, mature trees which otherwise might have been able to be preserved. Again, I remind the commission of the father's experience and connections in regard to property development. With that in mind, it seems like the Schlumpbergers prefer to ask forgiveness rather than permission. I ask the commission to deny the partition because prior actions demonstrate a risk for continued disregard of the sensitive lands buffer, and of regulations requiring the documentation and preservation of native tree species.

In regard to the third and final issue of the road access, the road as it currently exists past the Elks Lodge is already woefully insufficient for the current level of vehicle and pedestrian traffic. The lack of serious accidents speaks far more to the diligence, care, and responsibility of the residents than it does towards the suitability of the roadway. Given the current level of vehicle and pedestrian traffic, it's only a matter of time before a serious accident *does* occur. I ask the commission to deny the partition because the proposed turnout will not solve the issues created by the single lane, 11 ft wide road that bottlenecks all traffic past the Lodge. The additional traffic caused by the construction and occupation of another home will only exacerbate our existing road issues.

Hunter Blashill

RECEIVED  
JUN 16 2020  
CITY OF ST. HELENS



PORTLAND, OR 972

13 JUN 2020 PM 4 L

The Sorenson's  
488 Palmer Dr. N  
Keizer, OR 97303

St. Helens Planning Commission

% Jacob Graichen  
265 Strand Street

RECEIVED

JUN 15 2020

St. Helens, OR 97131

97051-203965



6-12-20

(1)

St. Helens Planning Commission  
% Jacob Graichen  
City Planner

Hi, Let me introduce myself, I'm Jeanne Sorenson, 78 years old AND A Stroke victim, AND my 81 year old husband. We sold the 160 Belton Rd. property to the Schlumpbergers. I feel Compelled to write after Listing to your Tuesday night meeting from Zoom Land to correct a few statements.

1. Mr. Andrew knew about the  
ensemblement, it was recorded in the  
title order 3604/19004081 #12.  
Shortly After we accepted his offer  
my husband invited Mr. Andrew over  
to point out drain field AND sewer  
system AND go over other important  
info. The drain field WAS NEVER

(2)

destroyed, just capped.

2. The douglas fir in question is at least 150 feet tall and 150 years old. It sits in the back yard by the river. A roosting place for the eagles and Osprey. In the 1996 flood the Columbia River and DAWSON LAKE flowed together and lapped at the trunk of tree. Over the years we had that large tree trimmed by tree professionals to keep it healthy. Please preserve this beautiful, healthy tree.

3. It was evenant to me after listening that Mr. Andrew did not want the house but only to develop the property. He told us he loved the privacy and

beautiful setting. So we accepted his offer.

This is not an issue, but I want to say, the spiral staircase inside of the home was never a problem for us. Mr. Andrew said it was dangerous for his small child. We raised our three grandchildren from birth to middle school in that house and had no issues.

We loved our home, neighbors and felt honored to live there.

Joanne Sorenson  
488 PALMER DR.  
KEIZER, OR



RECEIVED  
JUN 11 2020  
CITY OF ST. HELENS

Item 1.

"Please Don't Build on the Beach"

My name is Kathleen Ward. I am the property owner adjacent to the Schlumpbergers on the St. Helens side of their land. I am also part owner of the wooded waterfront property near Dalton Lake and the rest of the beach area adjacent to Schlumpbergers on the Columbia City side of their land.

Originally my family owned all of the beach, Dalton Lake and the woods between the lake and the Columbia River, all the way to Columbia City. Some years ago when the State of Oregon decided to replace land from Chimes Crest because of the four-lane highway near Columbia City, we were required to either sell land from the Dalton Lake area as wetlands replacement or have it condemned and receive no remuneration. What choice did we have! In later transactions, the city acquired part of that area, but as it is now, we own some of the rest of the beach and a strip of wooded riverside area between Schlumpbergers and Columbia City. After my brother Chuck Brownlow died in 2011 his undivided half of that parcel passed on to his children---Ron Brownlow, Darla Morely and C.T. Brownlow. I own the other undivided half of the parcel.

Four generations of our family have lived here, and I trust that our two little ones of the fifth generation, just born this year, will someday also set foot on this land. I feel very strongly about protecting the beach property from having a house built upon it. To me it is almost as a sacred trust---a duty, perhaps, to keep this pristine land from becoming part of a development area.

So, please listen for a few moments, not just with your ears, but with your hearts. I want you to understand why preserving the beach and other woodlands is a vital heritage to secure, not only for today but for the generations to come. There is so little untouched, pristine land remaining along the Columbia River, at least, near our communities of St. Helens and Columbia City, that we have a responsibility to guard what little is left.

I don't mind telling you I am 87 and 1/2, born and raised in St. Helens, and have always had a home here. When I was young, my family purchased river front land down below Columbia City near Trestle Beach. But during the 1940's a large, aluminum company insisted on buying our land. Because my family owned and operated the St. Helens Sentinel Mist, we were told we had to sell or there would be repercussions against the newspaper and it would show that we were against progress for the community. We were bullied, so to speak, into selling, even though we didn't want to do so. They had more power and more money than we did. After a time, that company changed its mind and never did follow through, but the land was lost to us.

Later, closer to St. Helens, we purchased land from Lena Dalton and also from Howard and Nellie Mansfield. And that is the land that became part of my inheritance handed down since the 1950's. My mother, Berenice Brownlow, built her house in 1953 and the beach area came to be known as Brownlow Beach. Over the years, Mother and my

brother Chuck sold pieces of the land when necessary, usually so they could pay taxes. And there were friendly transactions, also. Mother donated the Botanical Garden area to the city and Chuck's original house site is where the Elks Lodge was built. After that, Chuck built his house on the property we are now discussing. When, because of his job, he had to move to Alaska, he sold the house to Richard and Jeannie Sorenson. A few years after that, Sorensens purchased a strip of the beach property from me. They loved their seven mile down-river view, and they wanted to be certain to preserve it. We agreed on a very "user-friendly" price because we were friends. We were in accord that the beach should always be left untouched.

Our original property, nearly 70 years ago, had extended from the start of Belton Road, which by the way Mother named for my father's family estate in England, and it ran all the way through the woods clear over to Grey Cliffs Drive. Some of you listening, have beautiful homes with property carved out of this area owned by my mother. But always, houses were secluded and the neighbors were friendly, helping one another. No one wanted to build in such a way as to offend another's view of our beautiful Columbia River.

Years later, although they had always intended to stay here, because of health issues Sorensens put their house up for sale. When Schlumpbergers were interested in buying their house, Sorensens lowered the price considerably, wanting to be kind and helpful to a young family. So they sold their home to Andrew and Lindsay in all good faith, believing the couple loved the house as they did. And we neighbors were pleased someone had moved in wanting to fit into our neighborhood.

But Schlumpbergers did not intend to keep the Sorenson house as their home. What they wanted, was the beach for a house site.

This brief history is the backdrop for my present concern at allowing Andrew and Lindsay Schlumpberger to divide their property into two parcels. This area is so special in its secluded beauty that everyone is careful to protect the environment. Every home is built so as not to violate anyone's view of the river. I have nothing against Andrew and Lindsay personally, but I want them to be aware of how much their wishes impact our quality of life and the concern being created among neighbors.

When Lindsay first told me they wanted to build on the beach and might want to buy some of my land, I was stunned. In the first place, whoever heard of building on sand! And if memory doesn't fail me, I can remember at least twice in years past when that very beach flooded because the Columbia River over-ran its banks and merged with Dalton Lake as well. Not good!

Secondly, the beach is the perimeter of the wetlands/wooded area full of natural wild life of animals and birds. The Friends of Dalton Lake have been compiling the number of various bird species around the lake area and near the river. At certain times each year

Canada Geese frequent the beach. I have watched them teaching their little ones to swim. One parent is in front of the line and the other at the rear. In between is a bobbing row of six or eight little ones navigating waves taller than they are! Eagles, ospreys and herons are frequently seen fishing along the beach. We used to joke about one, very large blue heron who made his home in the trees of Dalton Lake. He flew past every morning about 7:30. As he galumphed along (that's how they fly) while on his way upriver toward St. Helens, we'd say, "There's goes Mr. Heron on his way to morning coffee!"

I can't guarantee that Lewis & Clark camped in this area but we know Native-Americans lived here because we have found arrow heads and our family even found a hollowed out stone probably used to grind corn. I am no longer able to navigate my access to the beach, because I fall easily, but I certainly enjoy the beach every day, with my eyes--- countless times a day!

Our land next to Schlumpbergers is not registered as a nature conservancy but we are treating it as such, and we may do that someday. We'd like the abundance of wild life, deer, smaller animals, birds and the indigenous plant life to remain undisturbed.

Our quality of life will be diminished greatly by the sounds of pile drivers necessary for securing footings in sand and I can't imagine the effect of construction sounds so close to this sensitive area. Some species will no doubt find other places to live, although where would they go? Three maple trees have already been taken down and more will have to be cut--- my afternoon shade, if Andrew and Lindsay's road has to go in along my property line. I have made it plain that I do not want their access road on my property. I teach piano lessons in my home, during ordinary times, and do not want traffic problems for my students and guests who visit.

Other trees are important, also. There are two mature fir trees in part of the area where Andrew and Lindsay want to build. One, the healthier and taller one, Andrew said would have to come down. It's probably at least 150 years old. The other fir tree, not quite as tall and healthy, is on my property. But for the safety of their family, if they are permitted to build on the beach, that tree also will have to be cut down. This is sad! For years we have watched ospreys and bald eagles land in the tops of those trees. When that happens I often run for the binoculars! Once I watched a community of crows dive- bombing an eagle. He sat there unconcerned, but ducking every time a crow almost hit him.

And today, just as I was writing about this situation, my granddaughter Holly who was at my house, came running upstairs, saying, "Grandma, two adult eagles have landed in Andrew's tree and they are necking." Perhaps they have nesting plans?

Several weeks back, after Lindsay and Andrew, Robin and I had walked over their proposed building site, they asked me to sell them a small piece of land along the edge



of their property. I wanted very much to be friendly even though I am sure they knew I was not happy about a house being built that would be "framed" so to speak in every window of my house on the Columbia City side. So I listened and considered agreeing. They explained how they could reposition their house closer toward the main house if I would sell them some more property and they drew up three options. Although I had seriously considered their first request, when I saw that one of the options would add two acres to their property, I became concerned as to where this might be heading. I didn't want to accuse them of deception, but I knew they had not been forthright with Sorensens, and I feared what other developments might later be planned if they had more land---that is, if you, the planning Commission approve the division of their property into two parcels. This area is not suitable for a housing development. Obviously money is an issue here since they really could tear down Sorensens' house and rebuild their own if they don't like the house they already have. And they would have the blessing and good will of all the neighbors because no one would be affected. But they want to sell that house for the money.

Please, consider carefully, Planning Commission, the responsibility you have to help us preserve this beach which is so close to being one of the last remaining sanctuaries of wild life, and part of the daily thoroughfare of herons.

Thank you for listening,

Kathleen Ward

# City of St. Helens Planning Commission

Approved Minutes

June 9, 2020

**Members Present:** Chair Hubbard  
Vice Chair Cary  
Commissioner Cohen  
Commissioner Semling  
Commissioner Lawrence  
Commissioner Webster  
Commissioner Pugsley

**Members Absent:** None

**Staff Present:** City Planner Graichen  
Associate Planner Dimsho  
City Councilor Carlson  
Community Development Admin Assistant Sullivan

**Others:**

CT Brownlow	Laurie Brownlow	Robert Sorenson
Jeanne Sorenson	Brandon Sundeen	Hunter Blashill
Kathleen Ward	Daniel Kearns	Patrick Birkle
Jen Pearl	Tracey Hill	Robin Nunn
Kristin Quinlan	Bryan Denson	Jeff Seymour
Brandon Deahl	Shauna Lewis	Andrew Schlumpberger
Lindsey Schlumberger	Ron Schlumpberger	

- 1) **7:00 p.m. Call to Order and Flag Salute**
- 2) **Consent Agenda**  
2.A Planning Commission Minutes dated May 12, 2020

**Motion:** Upon Commissioner Semling's motion and Commissioner Lawrence's second, the Planning Commission unanimously approved the Draft Minutes Dated May 12, 2020. Vice Chair Cary and Commissioner Pugsley did not vote due to their absence from that meeting. [AYES: Commissioner Cohen, Commissioner Lawrence, Commissioner Webster, Commissioner Semling; Nays: None]

- 3) **Topics from the Floor: Limited to 5 minutes per topic (not on Public Hearing Agenda)**

There were no topics from the floor.

- 4) **Public Hearings (times are earliest start time)**  
4.A 7:00 p.m. Conditional Use Permit at 254 N Columbia River Hwy – Brandon Deahl and Shauna Lewis

Chair Hubbard opened the Public Hearing at 7:02 p.m. There were no ex-parte contacts, conflicts of interests, or bias in this matter.

Associate Planner Dimsho entered the staff report dated June 2, 2020. Dimsho introduced the proposal to the Commission as presented in the staff report. She said the applicant is requesting to establish retail use and an artisan workshop. She said the workshop would be for preparing garden art using castings. Dimsho mentioned that to access the site you must traverse onto some private property and some Oregon Department of Transportation (ODOT) Rail right-of-way. She said it is all Houlton Business zoning, so that means it is a mixed-use zone. She said it is mostly commercial use in the area except for some townhomes which were not on the map presented. Dimsho mentioned the existing building closer to the railroad on the property is the proposed retail location and the shop in the back is where they would do all their cast work. They also hope to use outdoor storage to showcase their product which is what is triggering the Conditional Use Permit..

Dimsho said the first criteria that needs to be considered is that the space needs to be of adequate size for the proposed use. The site is a large area with lots of outdoor display area. She mentioned the applicant is proposing an addition to the workshop and they are proposing an addition to the retail space in the form of a deck. She mentioned the current deck will be redone and that is also where the applicant is proposing an ADA ramp. She said there is plenty of space on this site for those improvements.

The second criteria Dimsho said is that the characteristics are suitable for this use. She said they would need legal, public access to the site. They will also need to meet any requirements for the Building Official and Fire Marshall.

Dimsho said the third criteria is that the facility would need to have adequate capacity to serve the proposal. She said it is currently hooked into City water, but that it was not hooked into sewer. She said the Building Official had mentioned it would need to have access to sewer discharge. Dimsho said the nearest sewer line was 190feet. She said they have two options to solve the Building Official's concerns about sewer..

Dimsho said the zoning requires ten percent of the site to be landscaping, which was not shown on the applicant's plan and based on her site visit, it was void of landscaping. So, this would be a condition needed for approval. She also mentioned they require screening for outdoor storage. She said they currently are constructing a six-foot cyclone fence with black slats. She said they are also required to have four parking spots including ADA spot and the way the plan is presented now, the screening would have to soften the impact of their parking. She said there are options for creating the parking on this site, but the plan presented was not to scale. She also mentioned they are required to screen HVAC and dumpsters. She also said they require paved walkways to all entrances.

There was a small discussion about screening and landscaping.

### **In Favor**

**Deahl, Brandon. Applicant.** Deahl was called to speak. Deahl spoke about what his business does. He said they make cast stone or concrete statues, bird baths, benches, and decorative yard pieces. He said they would be making them onsite and store all their molds. He said the front building would be a cleaner environment to be able to sell some of their smaller pieces. He also said the outdoor storage space would be a garden area, with plants, paths, and landscaping where they could showcase their larger pieces. He said the only thing that would be



stored back there would be the pieces they make. He said he would not be stacking any of their products. He said he was hoping to take this vacant space and turn it into something beautiful.

Vice Chair Cary asked if they had spoken to the owner of the property for access to the site. Deahl said they have a verbal agreement with them but have had a hard time connecting with them. They do know access is a condition before they can have occupancy.

Vice Chair Cary also asked about the sewer access and how would they be hooking into sewer. Deahl mentioned that they have been in contact with the Public Works Department and they are hoping to have the unfinished sewer line tested, inspected, repaired, and completed. They are working on an public utility easement for the main line too..

Commissioner Pugsley asked about the restroom on site. Deahl said there is a restroom on site, but it was done incorrectly and possibly illegally. They will be correcting this issue.

### **Neutral**

No one spoke as neutral testimony.

### **In Opposition**

No one spoke in opposition.

### **End of Oral Testimony**

There were no requests to continue the hearing or leave the record open.

### **Close of Public Hearing & Record**

The applicant waived the opportunity to submit final written argument after the close of the record.

### **Deliberations**

The Commission discussed a few of the conditions and there was a small discussion about the sewer line and screening. Commissioner Pugsley also mentioned some of the historic value this property has.

**Motion:** Upon Commissioner Webster's motion and Commissioner Pugsley's second, the Planning Commission unanimously approved the Conditional Use Permit as written. [Ayes: Commissioner Semling, Commissioner Lawrence, Commissioner Webster, Commissioner Cohen, Commissioner Pugsley, Vice Chair Cary; Nays: None]

**Motion:** Upon Commissioner Webster's motion and Commission Semling's second, the Commission unanimously approved the Chair to sign the Findings when prepared. [Ayes: Commissioner Semling, Commissioner Cohen, Commissioner Lawrence, Commissioner Webster, Commissioner Pugsley, Vice Chair Cary; Nays: None]

### **4.B 8:00 p.m. Appeal of PT.1.20 at 160 Belton Road – Tracey Hill**

City Planner Graichen opened the Public Hearing at 8:04 p.m. There were no ex-parte contacts, conflicts of interests, or bias in this matter.

Graichen entered the staff report dated June 2, 2020. Graichen introduced the proposal to the Commission as presented in the staff report and the additional information received after

packets were mailed. He said it was originally an administrative decision for a partition of a property located at 160 Belton Road. It is adjacent to Dalton Lake and abuts the Columbia River. He mentioned the access road is predominantly 11 feet wide. He mentioned that the proposal is to split the property into two parcels. One already has a house on it and the other they would look to develop. He said per the Sensitive Land rules there is a 75-foot boundary from Dalton Lake and the river that is required. He said the applicant did conduct an environmental assessment to determine those boundaries. He said they want to make sure the net buildable space, after those boundaries were determined, is still a suitable lot size for new construction. He mentioned the applicant proposed an access easement to the south of the property over parcel one to get to parcel two. He also mentioned the easement for the septic drainfield that is shared with the subject property and 250 Belton Road.

Graichen mentioned there are three issues raised for this appeal. One was concern about removal of protected vegetation. He said they did investigate twice and did not see any new concern. He said they did get into the buffer a little bit, but it was mostly Himalayan black berries, and no large trees. He said they used that to educate the applicant and the rules for sensitive lands. The second concern was the easement for a drainfield. He said the significance of the drainfield is you are not supposed to put roads on it or construct utilities within 10-feet of the drainfield per the County. He said the debate between the validity of the easement is between the applicant and the appellant, but they do need it to be resolved for the Partition because the Commission does not want to create a parcel that does not have access. The third concern is road access to the subject property. The road being predominantly 11-feet in width is not something they would allow in construction and access today. Public welfare must be considered when looking at the access. He mentioned that one of the conditions, if approved, would be to add a 24-foot turnout. The Commission can decide if this is enough or they can request more. He said they could also say that this was too much traffic impact to this area, and they could deny the proposal.

Commissioner Cohen asked how many times the property could be partitioned. Graichen said they recommended against partitioning the parcel anymore because of utilities, access, and sensitive lands. Commissioner Cohen also asked why the Commission should not wait to decide on the Partition until the easement is under an agreement between the applicant and the appellant. Graichen said because the State statute does not allow staff to delay it. He also said they ended up amending the decision once, and he advised the applicant they would need to take care of the easement or to find a different way around it. He said the Partition would be valid for a year, with potential time extension, and it is conceivable that the easement issue could be resolved in that validity period.

### **In Favor of the Appeal**

**Hill, Tracey. Appellant.** Hill was called to speak. She lives at 250 Belton Road. She said her house allows her to see all the nature that lives nearby. She has seen herons, eagles, and many other wildlife. She said that her neighborhood is filled with people who have lived in these homes for many years. She said before she purchased her property, she did a lot of due diligence. She said she found out about her easement, she learned about it and what it was for. She said she learned what a STEP system was and how the sewage worked on this property she now lives on. She also mentioned how sewage has been a problem on these properties in the past. She said she became very familiar with different ordinances that protect the land around here and her responsibility to the sensitive lands that surround her home. She said that her easement was an insurance policy for her so that if the STEP system failed, she would still be able to live in her home. She said she has called the County Sanitarian, the Public Works

Director and other City entities and spoke with them about the validity of her easement. She said just because the easement is not in use currently, does not take the validity of it away. She said it protects the area on which it sits. She said it is bordered by and in some cases sits on the sensitive lands area. She said it protects the lake and the river. She mentioned her interactions with the applicant have been unpleasant.

**Kearns, Daniel. Appellant.** Kearns is the attorney of the appellant. He mentioned the easement is shared by both properties and that it is large. He said no use of the easement is allowed except for that of the drainage field. He said the parcel that is in question does not meet City code for access. He asked for denial of this request for partition, as the application, even with conditions, will be hard to complete within the allotted time frame. He said based on City code, the parcel, the way it sits, cannot be partitioned. He discussed the infrastructure of the step system and how it requires consistent maintenance. He said if there was any reason that the STEP system was to fail, the drainage field would be needed. He said the easement is an important insurance policy for his client's property. He said besides the easement, he does not think the Commission can approve the Partition based on City code for access and Sensitive Lands guidelines.

### **In Favor of the Application**

**Seymour, Jeff. Applicant.** Seymour is the attorney for the applicant. He said they prepared a preliminary tree and road improvement plan for the partition. He said the applicant has not used poison to remove invasive species. He mentioned after receiving a letter from the City that the removal was improper, they have not been down in those areas since. He said they did cut down a few trees that were in the access area. But the tree plan meets the requirements of City code. He said the easement is null and void because the septic system it was created for has been destroyed. He said the road access is something they are working to resolve and realize there will be a large expense to make it meet code. He requested the Partition be granted as he believes that there is plenty of time to resolve the easement disagreement and conditions within the year that the Partition would be valid.

**Schlumpberger, Andrew. Applicant.** Schlumpberger was called to speak. He spoke about the sticker bushes that are in the shrubs that get on his dog and family members. He spoke to a surveyor who suggested he would need to trim out a pathway to figure out where the property lines and 75-foot boundary is for the Sensitive Lands. He said he used a gas-powered trimmer and a tractor to make this pathway, not poison. He said the wetlands specialist gave him instructions on how to remove the invasive species. He said he stopped after he received the notice from Graichen and has not done anything since. He also mentioned that his experience with the appellant were unpleasant. He said he did not know about the drainfield easement when he purchased the house.

Vice Chair Cary asked if it was possible to use just part of the drainfield easement instead of the whole portion. Seymour said they would be fine with using part of the drainfield easement if the appellant would agree to it. But he said that the appellant has said many times she would prolong this and cost them as much money as she could to block the partition. Vice Chair Cary also asked why they chose the south side of the property for the access to parcel two. Schlumpberger said it was where the property lines would end up. He also said partly because of the current access and the 90-degree turn.

Chair Hubbard asked if the escrow showed the easement. Seymour said it looked like it was a sewer line, not an easement. Chair Hubbard also asked if the new system was in the same



place as the septic system that was destroyed. Schlumpberger said the appellant's tank was located on her property and his was located about 10 feet on his property.

### **In Favor of the Application**

**Schlumpberger, Ron.** Schlumpberger lives at 1400 Second Street in Columbia City. He said that he was excited to have his family close to him. He mentioned that before they purchased this property, they were told that there would not be an issue to partition it, so they decided to move forward. He said they hired an engineer to make sure the system was working correctly. He said the easement was a surprise to them but felt it would be an easy fix because the old system was destroyed and made it null and void. He mentioned that the appellant was going to do whatever it took to delay the partition and that she was not willing to work with them.

**Schlumpberger, Lindsay. Applicant.** Schlumpberger lives at 160 Belton Road. She said she felt that her family and their character was in question. She wanted to clarify that they are not looking to steam roll through the community or to cause problems. She said they try to be friendly with everyone and has tried to communicate with all the neighbors. She said there is a lot of stuff that needs to be maintained and they are trying to be diligent and responsible homeowners and take care of their property. She said it was not necessary to partition their lot, but as homeowners they can.

### **Neutral**

No one spoke as neutral testimony.

### **In Opposition to the Application**

**Nunn, Robin.** Nunn lives at 100 Belton Road. She said the applicants are nice people, but she is not ok with what they are doing to the property. She is concerned with where they are building the new house as it could cause damage to the new construction, but also interferes with the neighbors unencumbered views. She feels this property is the applicants through a loophole and what they are proposing is creating division in their neighborhood. She said she is worried about the new construction interfering with the wildlife that currently lives there and the Native American artifacts that are there. She said dividing it will bring property values down. She said the beach is not supposed to have people on it. It is owned by her mother and that when people are walking through it is trespassing. She is concerned about the safety of the road as well.

**Ward, Kathleen.** Ward lives at 140 Belton Road. She said originally her family owned all the beach property. She said the state acquired some of their land to have it declared wetlands. She said that four generations have lived on this area and she feels strongly that they need to protect the beach from being developed. She said it was important because there is so little pristine land along the Columbia River that is untouched. She is concerned that the development will interfere and hurt the local wildlife and vegetation that lives there. She said the previous owners came to an agreement with the applicants that this beach would remain untouched and undeveloped. She is unsure why the applicants would want to go against this agreement. She is concerned their proposal is divisive in her neighborhood.

**Blashill, Hunter.** Blashill lives in Corvallis. He said he is the son of the appellant. He said his interactions with the applicants were not pleasant. He mentioned there was a strong suggestion that the applicants did use poison to remove plants. He said he was concerned about the foot traffic that adding another home and opening beach would create for the already problematic access. He mentioned there was a large elderly population that lives in this neighborhood and

the narrow roads are an issue. He mentioned that the proposed partition and what the applicants are currently doing to their site would devalue the property around it.

**Sorenson, Jeanne.** Sorenson lives in St. Helens. She said they sold this subject property because she could no longer able to maintain it. She said the applicants knew about the easement as there was a copy included in the escrow. She mentioned there has been floods on that property before and where the partition proposes a property that would put a house right in the flood zone. She is also very worried about the division this partition is creating in the neighborhood.

**Sorenson, Richard.** Sorenson lives in St. Helens. He said when they owned the home, there was a meeting with the Fire Marshall and all the neighbors about the access challenges with providing fire protection to the neighborhood. At one point, the Fire Marshall said they would not provide protection to their neighborhood.

### **Rebuttal to the Applicant**

**Hill, Tracey. Appellant.** She felt her character was defamed and was upset that the applicants implied that she would hold them up in this partition. She said that she has lived there for a long time and all the neighbors know she is not like that.

**Kearns, Daniel. Appellant.** He said the Applicants property does not fall into code. He said the septic system was unhooked in 1990 and then they all hooked into the step system. He said at that point the drain field was not used. He said the pipe systems are still there and not filled with sand. He said the easement still exists and has not been abandoned. He gave more explanation as to why the easement is still valid. He mentioned he did not believe the turnout suggested for the access will meet the street code. He said he feels the only path forward, based on the City code is denial.

### **Rebuttal to the Appellant**

**Seymour, Jeff. Applicant.** He is said his clients will comply with all laws according to Sensitive Lands. He said they have a letter from the Fire Chief stating that the access is fine and not going to cause an issue with one more house. He is said he feels the 24-foot by 30-foot turn out should be a sufficient solution to the road access. He said the easement has been abandoned, that there are trees growing on it and that it is probably three times larger than it needs to be. He said that the applicants are willing to work with the appellant to find an agreement to the easement issue. He said there is another year to resolve all the conditions placed on this partition and he feels it can be done.

**Schlumpberger, Andrew. Applicant.** He said he will not build his new house in the flood plain. He will comply with city code on the flood zone requirements. He said there are a few options to build his house, but they have not gone that far as they are trying to resolve this matter first. As a firefighter, he said he knows that times are different now for how they respond to emergencies. They drive on narrow streets and says that a turnout will be a solution to fixing the access. He said that he was up front with all the neighbors about his intent to develop the property.

### **End of Oral Testimony**

There was a request to leave the record open for written testimony and for final written argument. As such, the public hearing will continue in written form. Graichen said the first period will be held open for seven days to receive written testimony. If there is written testimony received, there will be an additional seven days to responds to that testimony. At this point the

record closes. Then both the applicant and appellant may provide a final argument. The first period for response will end at 5 p.m. June 16, 2020 and the second period of response will end at 5 p.m. June 23, 2020. The deadline for final written comment will be due by June 30, 2020. The applicant agreed to extend the 120-day rule commensurate with these dates provided deliberations are continued to July 1, 2020, instead of the Commission's regularly scheduled meeting on July 14, 2020. A special meeting for deliberations and continuation of this public hearing was set for Wednesday, July 1, 2020 at 7:00 p.m.

**5) Riverfront District Architectural Guidelines Recommendation – Modification at 330 S 1<sup>st</sup> Street**

Dimsho said the site they were looking at has had several Site Design Reviews. She said in 2017, the office space was approved on the main floor and a live/work unit was proposed in the basement. She said since then, the applicant submitted a modification to approved 2017 Site Design Review. They have submitted a plan with some exterior rear facade modifications along with an ADA ramp. She said they plan to demolish the current deck in the back and build an ADA ramp that wraps around the building to get the right grade. She said they are proposing a bi-fold door as the current door is not ADA accessible. Commissioner Pugsley recommended installing doors as close to the original as possible, using wood, not vinyl. Dimsho also mentioned the ramp design on the plans mentions metal railing. She said the owner discussed that all exposed metal would be painted to match the fencing that is currently in front of the home. They would be painted according to historical guidelines. Commissioner Pugsley was concerned about the metal mesh that was proposed. She said she would recommend doing the slats on the railing of the ramp to match the vertical fencing slats in the front.

There was small discussion about the ADA ramp and making sure it matches historical guidelines while also meeting ADA requirements.

**Motion:** Upon Commissioner Webster's motion and Vice Chair Cary's second, the Planning Commission unanimously recommended approval of the Site Design Review Modification with the additional condition that vertical slats are used in the ADA ramp, instead of mesh as proposed. [Ayes: Commissioner Semling, Commissioner Lawrence, Commissioner Webster, Commissioner Cohen, Commissioner Pugsley, Vice Chair Cary; Nays: None]

**6) Riverfront District Architectural Guidelines Recommendation – Bennett Building Modification at 275/277**

Graichen said the City has a lot of projects going on at once. He said they have been working on a different land partition that did not allow him to work on this presentation. He said that he will table this recommendation until next month so that he has more time to review it. He said the City is not doing any more work on this project without the Planning Commission recommendation.

**7) Planning Director Decisions**

- a. Temporary Use Permit at 2295 Gable Road – TNT Fireworks
- b. Temporary Use Permit at 735 Columbia River Hwy – Bethel Fellowship
- c. Temporary Sign Permit at 2100 block of Columbia Blvd – SHHS Senior Planning

There were no comments.

**8) Planning Department Activity Report**



a. May Planning Department Report

There were no comments.

9) **For Your Information Items**

There were no comments.

10) **Next Regular Meeting: July 14, 2020**

11) **Adjournment**

*There being no further business before the Planning Commission, the meeting was adjourned 11:36 p.m.*

*Respectfully submitted,*

*Christina Sullivan  
Community Development Administrative Assistant*

# Planning Commission Meeting 06-09-2020

Dear Committee members:

When my son and daughter in law first approached me about purchasing this piece of property I being a new grandparent was very excited about the idea of them wanting to raise a family not only close to us, but near the one thing that has always been part of my life the water and the Columbia River.

The seller, the realtor, and the city all indicated they did not see a problem to partition the property, after all it was over 2 acres in the City limits, the same aprox amount of property that the Petersons are building 13 townhomes across the street from me in Columbia City, and he was only requesting to add one dwelling unit the same as an ADU would be on City services. So they went forward with the purchase, then the conditions and requirements started to come out, from hiring an engineer to determine that the City's Sewer system would handle an additional dwelling, hiring a wetland specialist to meet all the conditions that were required, not only from the City but from a neighbor that verbally stated not only to us, but to another neighbor, that she was going to do everything she could do to stop them.

I realize from past experience that there is a process in place to allow Public input but I believe Andrew and Lindsay have done everything that has been asked from them and more. They've agreed with the Administration conditions of the preliminary plat approval, and those comments that were brought up by the neighbors have all been addressed in the revised conditions and imposed upon them. Adding significant costs and hardship to them, only to have it appealed on the last day. I fail to see what the basis of the appeal is if all the comments and conditions of not only the Administration but the neighbors have been addressed if not to harass and extend this process out unnecessarily. You as the planning commission can say enough is enough, this is not a subdivision it is one young family wanting to build their dream home and be a good neighbor and continue to give back to the community they grew up in. That there is no new evidence that would legally prevent this partition from being approved that hasn't already been addressed.

Ron Schlumpberger

1400 2<sup>nd</sup> St

Columbia City, Or 97018

March 8, 2020

To Whom It May concern:

I, Rick Sorenson @ 160 Bolton Rd, Art Johnston @ 250 Bolton Rd. and Steve Edvey @ 585 Gray Cliff Dr. in St. Helens, OR collectively went together with approval of the City of St. Helens, hired a Certified Engineer. Approved by the city to disconnect our septic systems & hook up to the city sewer system. All former septic systems were abandoned by filling old tanks with sand, disconnect old drainfields & installed new concrete holding tanks that pumped to the city sewer. All old drainfields are obsolete, not in use & bricked up. Art Johnston had an EASEMENT to my property & signed off on that easement at the time of hooking up to the city sewer. I have moved & do not have the paperwork anymore, but did provide to the city that information at that time. This all happened in the early or middle of the 1990's. Please call me if you have any questions & I will be glad to answer to the best of my ability. 503-369-5075.

R/Sorenson



SUBMITTED AT 6-9-2020 12: HEARING



Item 1.

Egrets



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204-10



204-10



120100

MONITOR AT 09-0000 120100







SHUTTER ON 2-20-11 11:21:19





SWATHYTH 04-20-11 04-20-11 04-20-11



USE MAP

Item 1.



STATION AT 0 7-2020 YR (10/19/15)



RECEIVED

JUN 9 2020

CITY OF ST. HELENS

Reeve Kearns PC

Attorneys at Law

510 American Bank Building  
 621 S.W. Morrison Street  
 Portland, Oregon 97205  
 Voice Mail: 503-225-1127  
 Email: dan@reevekearns.com

Daniel H. Kearns  
 Direct Dial: 503-997-6032

June 9, 2020

St. Helens Planning Commission  
 c/o Russell Hubbard, Chair  
 St. Helens City Hall  
 265 Strand Street  
 St. Helens, OR 97051

VIA HAND DELIVERY

**Re: Appellant's Hearing Memo – Partition PT.1.20 (Schlumpberger)**

Dear Chair Hubbard and Commissioners:

I represent Tracey Hill, the appellant in this appeal, and submit this memo in support of Ms. Hill's appeal of the Director's decision to approve the Schlumpbergers' partition. My client owns and lives at 250 Belton Road, adjacent to the applicants' property that they now seek to partition. We challenged the Director's approval on three grounds, but all are intertwined and related to the issues that were material to Ms. Hill's purchase of her property in the summer of 2018. These material issues and the grounds for appeal are also based on the Municipal Code provisions that should govern this partition request.

**Background to Ms. Hill's ownership of her property:**

As a starting point, the property in question is located in an environmentally sensitive area with a City "Sensitive Lands" designation over Dalton Lake, the Columbia River, and the riparian areas associated with each. As all of you are aware, the properties in this area have beautiful lush native vegetation and are a haven for birds and wildlife largely because of the protection afforded them by Chapters 17.40 and 17.44 of the St. Helens Municipal Code. This code-based protection scheme was a primary reason for Ms. Hill's purchase of her property because it gave legal protections to the resources she valued, and it worked.

Additionally, during Ms. Hill's due diligence period prior to purchasing her property, she investigated the sewer and septic systems for the property. She was aware that the property was on a publicly owned STEP (Septic Tank Effluent Pump) system – a pumped system that connects to the city's conventional sewer system near Belton Road's junction with N 6<sup>th</sup> Street beyond the Elks Lodge and more than 300 feet from her property. She understood the operational and maintenance expenses and long-term complications of a STEP system, which involves an on-site septic tank, a grinder and pump, and a sewage ejector pump which collectively grind the sewage effluent and pump it into the STEP line, uphill and into the City's conventional system. Ms. Hill was also aware of the on-site septic system associated with this

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property and, from the title report, was keenly aware of the recorded septic drainfield easement her property retained on the adjacent property, now owned by the applicants. These were all important factors in Ms. Hill's decision to purchase and live on her Belton Road property, all of which are jeopardized by this application and these applicants.

In light of the long-term operational and maintenance complications and the uncertainties associated with a STEP system, Ms. Hill understood the importance of the septic drainfield easement and the possibility of reestablishing an on-site septic system in the event the STEP system failed and there were insufficient funds or political motivation to repair it. As part of her due diligence, Ms. Hill obtained from the sellers (Tina and Art Johnston) an On-site Septic System Addendum to the real estate contract precisely because she was concerned about the STEP system's long-term reliability and the potential need to reestablish on-site septic if the STEP system failed. As to the long-term reliability of such STEP systems, according to the Public Works Director, "there are no guarantees." The recorded septic drainfield easement had the additional value of precluding further development close to her home, which is precisely the issue presented in this application. To be clear, Ms. Hill was pleased that the property was connected to the public STEP system, and she hopes never to have to reactivate on-site septic, but she knew that the STEP system was different and far less reliable than a conventional sewer system. Her legal right under the code and as a property right to reestablish an on-site septic system if the STEP system were ever to fail was therefore equally important as an insurance policy guaranteeing the habitability of the property.

### Appeal Issues:

1. Sensitive Lands violations – Unpermitted tree and vegetation removal. The first appeal issue relates to the applicants' removal of mature trees and other native vegetation from the Sensitive Lands Buffer without benefit of a permit. The applicants' property is encumbered with two types of protection zones under SHMC Ch. 17.40: 75-foot Protection Zone associated with the Columbia River and a 75-foot Protection Zone associated with Dalton Lake wetlands. Ms. Hill will provide before and after photographs at the hearing to show what happened, but the chainsaws, heavy equipment and subsequent spraying of herbicide were, to put it mildly, very disturbing when she assumed that the Municipal Code and City administration were sufficient to protect these areas.

The applicant appears to admit, and staff confirms, the unpermitted vegetation removal, but assumes that the violations can be cured by simply providing an after-the-fact tree plan and mitigation. It is not clear whether and to what extent protected trees were removed from the Protection Area, and the City may never know. Tree and vegetation removal, using hand tools, heavy equipment and chemical herbicides, as the applicant did in this case, all qualify as "alteration" and "clearing," as defined in SHMC 17.40.010 (definitions), and require City review and compliance with the mitigation and impact minimization requirements of SHMC 17.40.040 (Protection zone exceptions – Limited activities and uses within the protection zone) and 17.40.055 (General criteria for exceptions and other approvals). An after-the-fact non-process skips all of these criteria because the resources and features that SHMC Chapter 17.40 aims to protect are already removed.



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The defect in the Director's decision is that it loses focus on the approval criteria and requirements to minimize impacts to protected areas and resources in SHMC 17.40.040 and 17.40.055. The Director's decision assumes that compliance with all of these approval and minimization requirements is no longer needed or required. If this partition is approved, the applicants must be required to submit an application to alter these protected areas with the assumption that they can still be preserved and to engage a suitably qualified professional consultant to analyze what evidence is left on the land and determine the extent of the damage and the degree to which the applicants can and should still comply with these approval criteria. If the City's Sensitive Lands requirements are so easily avoided by simply removing vegetation, trees and other resources without a permit and then asking for partition and home site approval, then violation will be the norm, to the extent it is not already.

2. Lack of access for Parcel 2 – septic drainfield easement. As explained above, Ms. Hill was very aware of the septic drainfield easement for her property that encumbered the applicants' property. It was a significant factor in her decision to purchase and live on this land because it provided (and still provides) an insurance policy guaranteeing that her property can be inhabited in the event the STEP system fails and replacement is too costly. Ms. Hill has no intention of using her easement rights or developing a septic drainfield on the applicants' property unless the STEP system fails, in which case, it may be her only option for continued occupation of her property. Apparently, the applicants did not discover the easement that is a recorded encumbrance of title to their property, even though it appeared in their title report. Attached to this memo are two e-mail exchanges with the County Sanitarian (Erin O'Connell) and the City's Public Works Director (Sue Nelson) telling the applicants about the legally binding nature of Ms. Hill's drainfield easement and advising them to communicate with Ms. Hill. Rather than call or speak with their neighbor about her easement, the applicants proceeded with their partition application then hired an attorney who now promises to sue Ms. Hill and attempt to remove her easement from title to the applicants' property.

For the entire time Ms. Hill has lived on her property, never once have the applicants (or their lawyer) approached her to discuss her septic drainfield easement that encumbers their property or what would be needed to extinguish it. Now, for the first time in the context of this appeal, the applicants' lawyer claims that there was some sort of meaningful communication, but he flatly states that the applicants will simply sue Ms. Hill to remove her easement. The only communication I have received from the applicants' attorney on the matter is to prepare an extinguishment for my client to sign. There has never been any effort to talk with Ms. Hill or discuss what she needs or wants as a suitable replacement for her drainfield easement – only an overbearing sense of entitlement. The applicants' lawyer now invites the Planning Commission to play the role of a Circuit Court Judge and find that his clients have or will easily obtain the extinguishment of Ms. Hill's easement and approve the partition on that assumption. The Planning Commission should reject these arguments, refuse to serve as a Circuit Court Judge, and instead deny the application because the only evidence in this Record is that there is no legal means of access to serve Parcel 2 as proposed.

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The applicants' lawyer claims that he can easily obtain the extinguishment of Ms. Hill's easement with the following arguments:

"In the 1990s, the prior owners of both Applicants' and Appellant's properties hooked their properties up to the City's public sewage system. At the time of connection to the sewer system, the septic drain field on Applicants' property was destroyed by filling it in with sand and gravel, and disconnecting the pipe system between Appellants property and the drain field. The prior drain field on Applicants' property now has mature fir trees and other vegetation growing on it."

"SHMC section 13.14.160(4) provides that the owner of a house with access to the public sewer system must connect with the public sewer system. Conversely, SHMC section 13.14.170(1) provides that a homeowner may only connect to a private wastewater system if public sewer is not available."

Applicant's Response at p 2.

There is no dispute that Ms. Hill's and the applicants' homes were connected to a publicly owned STEP system in 1989-90, which connects to the City's conventional, gravity feed sewer system some distance beyond the Elks Lodge. So long as the STEP system remains operational, both homes will continue to use it for sewage disposal. However, the STEP system is not nearly so reliable, cost-effective or problem-free from an operational or maintenance perspective as a conventional sewer system. A STEP system uses an on-site septic tank, a grinder pump, and a sewage ejector pump, all on the private property, which then discharges into the pressurized STEP line in Belton Road, from which it is pumped up hill to the City's conventional sewer line. The applicant assumes incorrectly that the Belton Road STEP line is the conventional public sewer system collector line; it is not. Instead, the applicant's lawyer cites SHMC 13.14.060(4) for the proposition that "the owner of a house with access to the public sewer system must connect to the public sewer system." Applicant's Response at p 2.

St. Helens addresses this distinction of a STEP system in the next subsection, which the applicant overlooks:

(5) The city engineer may require owner to design, build, and install a STEP system in order to gain access to the public sewer system. Owner will be required to enter into a sewer agreement with the city. Such agreement shall contain the following conditions:

- (a) The design of the system, the equipment to be installed, and the materials to be used must be approved by the city engineer;
- (b) The installation of the system must be approved by the city;
- (c) The costs of the system, direct and indirect, shall be paid by owner. Special fees are authorized and are to be based on administrative costs incurred by the city. Such fees shall be set by resolution;

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(d) When the system is completed and installed, owner shall transfer ownership of pump, lines, and appurtenances thereto to the city. Owner shall execute an easement where the pump, lines and appurtenances are on private property;

(e) Owner shall be responsible for the maintenance and repair of such lines and equipment. Any such work must be done with the approval of the city engineer. Failure to maintain or repair shall be deemed to be a breach of the agreement;

(f) Owner shall pay all other fees as normally required by this chapter; and

(g) The city engineer may set any other conditions that are consistent with the purpose of this chapter.

SHMC 13.14.060(5).

The Belton Road sewer line is not a conventional city sewer system. It is a STEP system with multiple private pumps, grinders and septic tanks, all of which must be maintained and repaired to remain operational over time.

This code provision makes clear the long-term expense and uncertainty of the Belton Road STEP system and the logic in Ms. Hill's reliance on the possibility of reestablishing on-site septic as her "insurance policy" for the day when the Belton Road STEP system fails. SHMC 13.14.060(4), cited by the Applicants, requires connection to the public sewer "provided, that the sewer is within 160 feet of the property line." Conventional city sewer is more than 300 feet away from Ms. Hill's property on the other side of the Elks Lodge; therefore, if the Belton Road STEP system fails, SHMC 13.14.060(4) would not require her to connect. In that case, Ms. Hill could and would lawfully reestablish her on-site septic system, including use of her drainfield on the applicants' property under her recorded drainfield easement. Given a STEP system's inherent long-term uncertainties, operational and maintenance costs, any of you would want a back-up plan for sewage disposal; otherwise, Ms. Hill's property could become uninhabitable. Thankfully, SHMC 13.14.060 authorizes this back-up plan, and her recorded easement ensures she has the right to do so. To be clear, nobody ever wants to use their insurance policy, but everyone places great value and importance on having insurance – in this case a back-up plan that ensures Ms. Hill's property remains habitable no matter what happens to the STEP system.

There are additional reasons that the applicants' argument that the drainfield easement is no longer valid lacks merit. There is no evidence that the septic drain field was ever filled with concrete or sand, crushed or otherwise destroyed as the applicants assert. In fact, none of that happened. The drainfield remains today as it was the day it stopped being used in 1990. The original septic tank on Ms. Hill's property was filled with sand before a new septic tank for the STEP system was installed, but nothing was done to decommission or destroy the drainfield, which is the subject of Ms. Hill's easement.

The most the applicants can say is that the drainfield is not currently used, but it still exists in law and in fact. The best evidence of the two property owners' intentions to maintain the septic drainfield option when these properties were connected to the STEP system is: (1) the



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drainfield was never destroyed, filled with sand gravel or anything, and (2) the recorded easement was never extinguished, and remains on title today. The applicants claim it was intended that the easement would be extinguished, but clearly it is far easier to record an extinguishment document than to fill the drainlines “with sand and gravel,” as the applicants falsely assert. In fact, neither happened – the drainfield was not destroyed, filled or decommissioned, nor was the easement extinguished – which is compelling evidence that neither party then or now wished to eliminate the potential future reestablishment of the drainfield within its easement, thus an insurance policy for both property owners.

These inferences of the original property owners’ intentions are clear from the record before you, which also means that the applicants will be unable to obtain an order from Circuit Court declaring the drainfield easement “abandoned.” First, Oregon law strongly favors written property documents, such as signed and recorded deeds and easements over verbal assertions that prior parties “intended” those encumbrances to be abandoned. That is why Oregon courts require proof of abandonment by “clear and convincing evidence” (not just a preponderance), and that mere non-use is not sufficient to show abandonment. Second, courts require proof of affirmative acts inconsistent with the easement, such as destruction or removal of the drainfield pipes, which did not happen in this case. The applicants’ self-serving statement that the drainlines were destroyed (filled with sand and gravel) is not only false, but there is no corroborating evidence. Finally, the applicants’ misunderstanding about the nature of sanitary sewer service on Belton Road, the long-term uncertainties of a STEP system, and the high cost of replacing the system if it fails support Ms. Hill’s need for a back-up plan. After all, the legal right and practical feasibility of reestablishing the on-site septic was a significant element in her decision to purchase her property. She did her due diligence before purchasing her property, and the applicants apparently did not.

Only circuit court is authorized to construe the meaning or validity of recorded title documents, such as Ms. Hill’s easement, not a city planning commission. The only relevant evidence in the Record before you is Ms. Hill’s recorded drainfield easement, which precludes access to Parcel 2, as currently proposed. Based on this evidence, there is no access for Parcel 2 as required by SHMC 17.84.070, and the Planning Commission must deny this application. Granted, these applicants may someday approach Ms. Hill to begin a discussion with her as a neighbor about her intentions and what accommodations can be made for her drainfield easement and access for Parcel 2, but the applicants will have to initiate that conversation, something they have so far refused to do. The Planning Commission should not simply approve the partition with a condition that the applicants deal with Ms. Hill’s easement. Instead of starting this conversation, which should have happened long ago, their lawyer promises to sue Ms. Hill to extinguish her easement. Please do not encourage this behavior by approving this partition with a condition. Instead, the Planning Commission should force the applicants to address Ms. Hill as a neighbor and initiate a conversation about a mutually agreeable solution.

3. Failure to require minimum street improvements to Bolton Road. Bolton Road is effectively a long substandard and over-length dead-end cul-de-sac. The roadway is within a 50-foot public right-of-way, but the pavement width is extremely narrow, varying from 17 feet wide near the Elks Lodge to 11 feet for most of its length. SHMC 17.84.070, Figure 15 requires such

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access roads to have a minimum access width of 24-30 feet (which is met) with a minimum pavement width of 20 feet when serving 3-6 homes, which is not met. An 11-foot pavement width is inadequate, does not meet minimum city standards, and is unsafe for the current number of dwellings much less the addition of new dwellings. Approval of a new buildable parcel on this road not only endangers public safety, it violates the City's minimum access requirements in SHMC 17.84.070.

The Applicant and staff suggest that requiring that Belton Road be widened its entire length to a 20-foot pavement width is disproportionately expensive compared to the impact of one new lot. That argument may be valid if the City were to impose a condition requiring the applicant to widen Belton Road, but it is a valid and legally required basis for denying the partition. Columbia River Fire and Rescue submitted a letter stating that the ROW is sufficiently wide to all their trucks to serve residents, and the Administrator suggested a single turn-out near the blind curve on Belton Road. However, that does not remedy the life safety hazard, does not satisfy or substitute for a variance to the City's street width requirements. If this application does not propose to comply with the 20-foot pavement width requirement in SHMC 17.84.070, it must be denied, or the applicant must apply for and obtain a variance from this standard. The standard cannot simply be waived as the applicants wish.

Please leave open the record of this matter for at least 7 days following today's hearing to allow us to respond to anything the applicants might submit. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Kearns", with a long horizontal flourish extending to the right.

Daniel Kearns

Enclosures

cc: Client

**Jacob Graichen**

---

**From:** Sue Nelson  
**Sent:** Thursday, February 13, 2020 12:35 PM  
**To:** Erin O'Connell  
**Cc:** Jacob Graichen  
**Subject:** Belton Road STEP system  
**Attachments:** S-471.pdf; RE: Sewer accounts

Hi Erin,

Per our conversation earlier today regarding the Belton Road STEP system, the City's records indicate that the two properties in question, 160 Belton Road and 250 Belton Road, are connected to the public sewer via a STEP system. This conclusion is based on utility records and has not been confirmed by any field testing.

Attached is a copy of a recent email from our Utility Billing Department confirming the billing status of several addresses adjacent to the STEP system. It shows that both 160 and 250 Belton Road are charged for sewer and water service.

Also attached is a copy of the as-built plan sheet from the STEP system construction. It shows a total of three properties being connected to the pressure main and, although the plan sheet does not indicate addresses, two of the properties on the plan correspond with the locations of 160 and 250 Belton Road. See the excerpt below from the City's GIS system.

This is pretty much all the information I have available on this STEP system and the connections. Please let me know if you have any questions.

Thank you,

*Sue Nelson, P.E.*

Interim Public Works Director  
503.397.6272, x 123  
suen@ci.st-helens.or.us







## Jacob Graichen

---

**From:** Jamie Edwards  
**Sent:** Tuesday, August 06, 2019 12:39 PM  
**To:** Sue Nelson; Dawn Richardson; April Messenger  
**Subject:** RE: Sewer accounts

Hi Sue,

Here is what each property is currently being billed; please let me know if we need to make any changes.

565 Grey Cliff Drive (Gillen)	Water only
575 Grey Cliffs Drive (Hough)	water only
585 Grey Cliffs Drive (Parker)	water & sewer
80 Belton Road (Dickinson)	water only
90 and/or 100 Belton Road (Nunn)	100 Belton Rd; water only
105 Belton Road (Belcher)	water & sewer
140 Belton Road (Ward)	water & sewer
160 Belton Road (Sorenson)	water & sewer
250 Belton Road (Hill)	water & sewer
263 Belton Road (Barker)	no services
265 Belton Road (Barker)	water only
371 Belton Road (Dery)	water & sewer
381 Belton Road (Snow)	water & sewer

Thanks,

*Jamie Edwards*

Utility Billing Specialist

City of St. Helens

503.366.8210

Fax: 503.397.3490

[www.ci.st-helens.or.us](http://www.ci.st-helens.or.us)




---

**From:** Sue Nelson  
**Sent:** Tuesday, August 06, 2019 11:40 AM  
**To:** Jamie Edwards; Dawn Richardson; April Messenger  
**Subject:** Sewer accounts

Hello,

I am trying to track down if certain properties are hooked up to the City sewer. Can someone please check to see if the following addresses pay for sewer on their utility bills?

565 Grey Cliff Drive (Gillen)  
575 Grey Cliffs Drive (Hough)  
585 Grey Cliffs Drive (Parker)  
80 Belton Road (Dickinson)  
90 and/or 100 Belton Road (Nunn)  
105 Belton Road (Belcher)  
140 Belton Road (Ward)  
160 Belton Road (Sorenson)  
250 Belton Road (Hill)  
263 Belton Road (Barker)  
265 Belton Road (Barker)  
371 Belton Road (Dery)  
381 Belton Road (Snow)

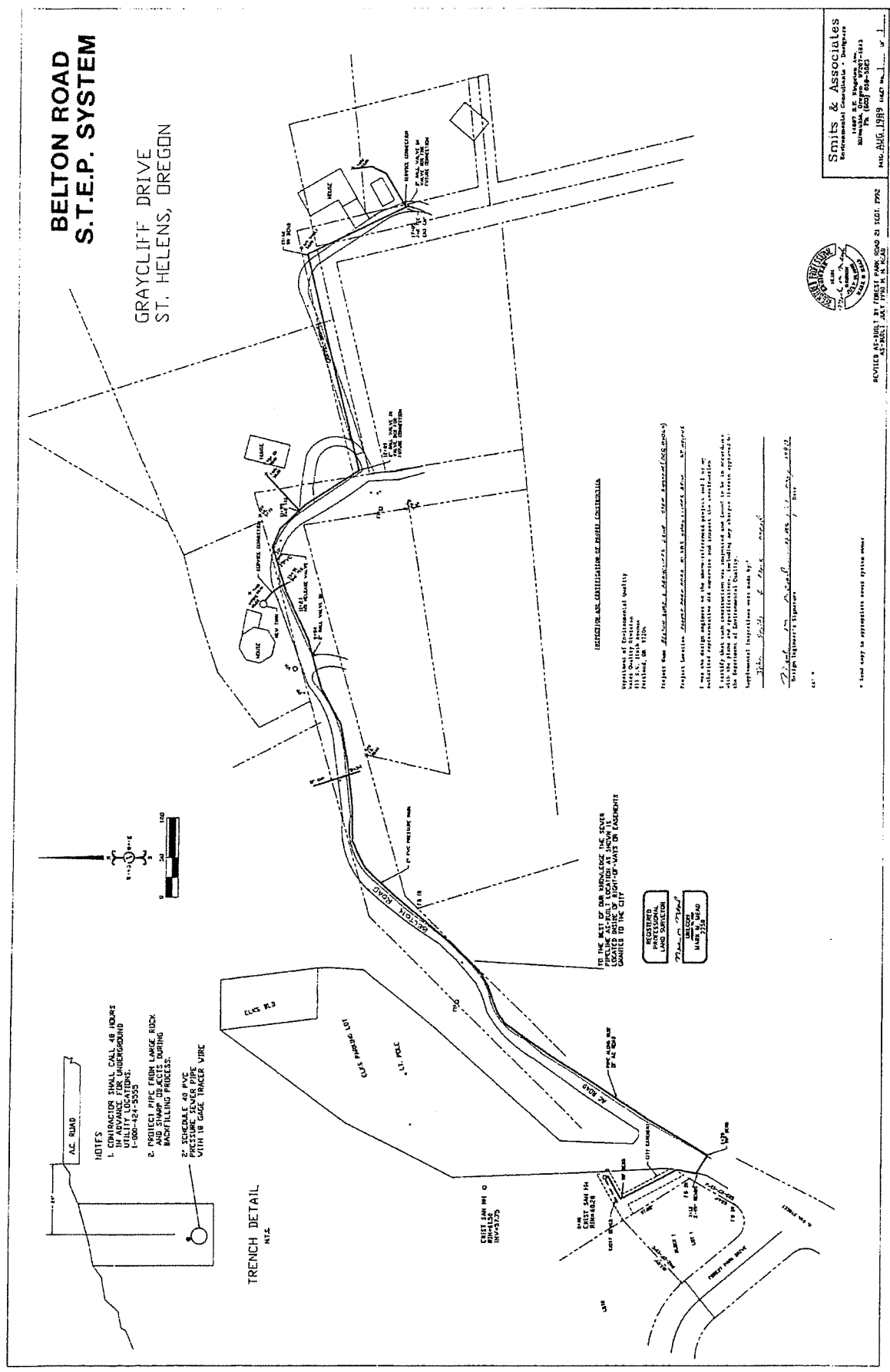
Thank you very much!

*Sue Nelson, P.E.*

Interim Public Works Director  
503.397.6272, x 123  
[suen@ci.st-helens.or.us](mailto:suen@ci.st-helens.or.us)







**Jacob Graichen**

**From:** Erin O'Connell <erin.oconnell@columbiacountyor.gov>  
**Sent:** Thursday, February 13, 2020 4:25 PM  
**To:** a\_schlumpberger@hotmail.com  
**Cc:** Jacob Graichen; Sue Nelson  
**Subject:** [Email from external sender] 160 Belton Rd septic system easement findings

Hi Andrew,

I was able to talk with Jacob Graichen and Sue Nelson at the City of St. Helens regarding your property at 160 Belton Rd and then the neighboring property at 250 Belton Rd. Your father also happened to come in and provided your email address for follow-up.

According to the sewer information Sue had, both properties appear to be connected to sewer. This was not verified in the field, which it is suggested that this get confirmed, however both utility billing records and the sewer extension as built document indicate that the properties are connected. I have enough information to feel comfortable advising that you should work with the neighbor to release the existing easement as it is no longer applicable. While the easement is no longer actually needed for the protection and maintenance of the septic system, it is a legal document that needs to be resolved between the respective owners. It is my understanding that the existing septic tanks were likely utilized in the step system to connect to sewer. Releasing the easement, which as of now is considered an encumbrance to your proposal, should open you up to be able to provide for the access and utility work needed to support partition. Good luck.

Erin O'Connell  
 Environmental Services Specialist  
 Columbia County  
 503-397-7222

**Service ~ Engagement ~ Connection ~ Innovation**

• PER 1976 ON-SITE  
 PERMITS -  
 SHARED DRAINFIELD  
 • UNDERGROUND UTILITY  
 REQ 10' SETBACK FROM  
 DRAINFIELD  
 • DRAINAGE OVER DRAINFIELD  
 NOT ALLOWED

SEED SYSTEM - INSTALLED 89-90  
 HOUSES CONNECTED TO IT FROM A  
 SOURCE AFTER

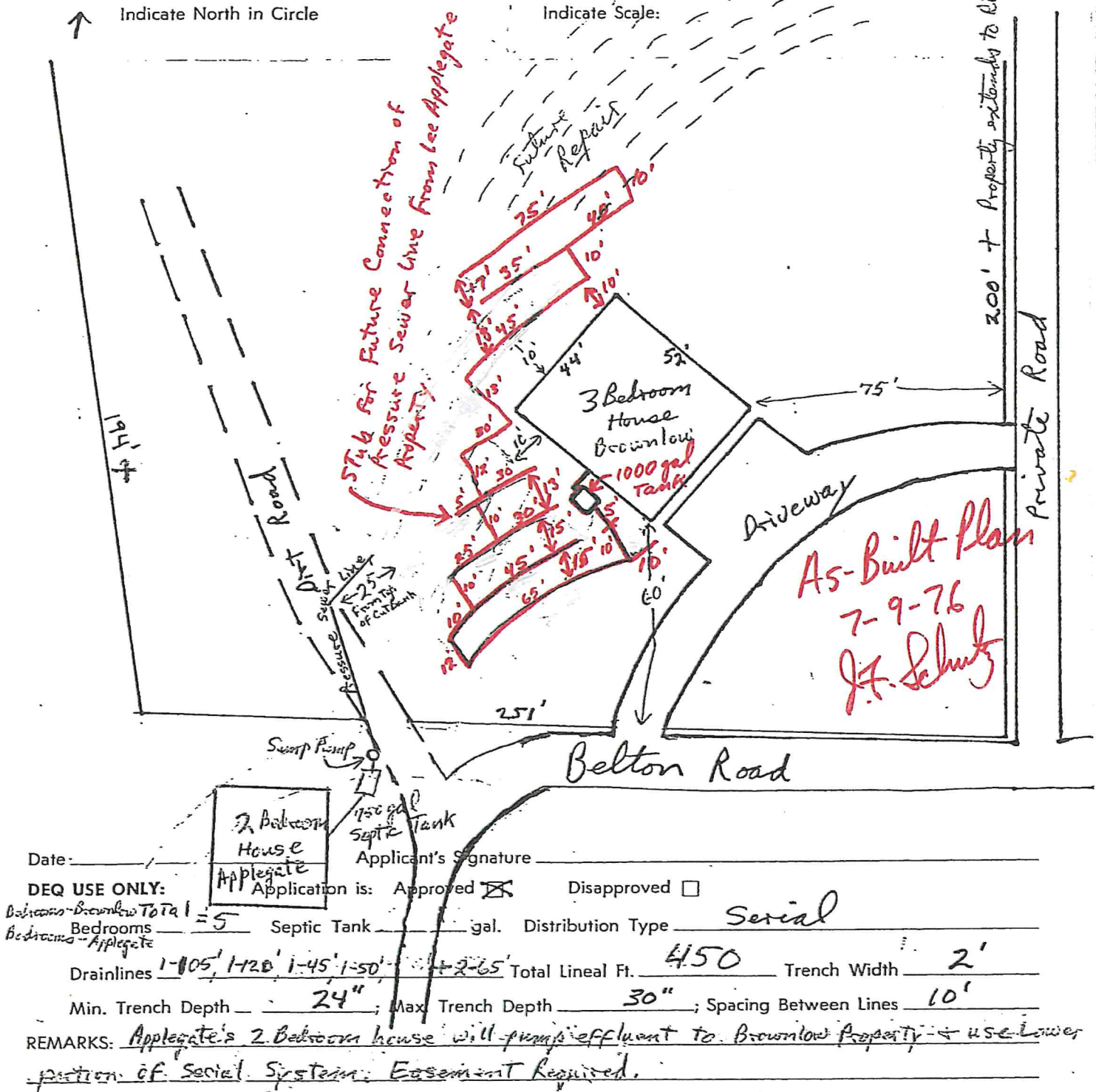
## PROPOSED SUBSURFACE SEWAGE DISPOSAL SYSTEM

Owner Charles T. Brownlow <sup>+ Lee Applegate</sup> Installer Bill Wood

T 5 N, R 1 W, Sec. 34, A.N. 5134-023-1100

Upon completion of construction, notify DEQ for inspection of the uncovered system.

A certificate of satisfactory completion must be issued prior to use of the system (ORS 454.665).







T5N R1W, WM

Parcel 1: Beginning at a point which is N 4° 35' 30" W 1223.3 ft and East 1891.3 ft from the Northeast corner of "Rose Hill", Columbia County, Oregon, said point being on the left bank of the Columbia River; th along the left bank N 31° 38' W a distance of 266.87 ft; th S 69° 24' W a distance of 227.37 ft to the true point of beginning; th N 24° 36' 30" W to a point on the most Easterly North line of City Ordinance # 1877 recorded Aug. 18, 1969 in Book 174 page 343 Deed Records of Columbia County;

- th S 60° 21' W 153.57 ft;
- th S 57° 16' W 46.43 ft;
- th S 63° 47' 30" W 81.22 ft;
- th S 64° 47' 30" W 73.10 ft;
- th S 46° 33' W 87.50 ft;
- th S 34° 02' E to the North line of 50 ft road easement described as parcel 3 in deed from L Bernice Brownlow et al to Theodore Mansavage et ux recorded Mar 14, 1968 in Book 168 page 513, Deed Records, Columbia County;
- th N 69° 42' E along the North line of said 50 ft road easement to a point that is S 69° 24' W 200 ft and N 16° 02' W 6.3 ft and N 24° 36' 30" W from the true point of beginning;
- th S 24° 26' 30" E to a point that is S 69° 24' W 200 ft and N 16° 02' W 6.3 ft from the true point of beginning;
- th S 16° 02' E 6.3 ft;
- th N 69° 24' E 200 ft to the true point of beginning, EXCEPTING that portion lying in said 50 ft road easement deeded to said Theodore Mansavage by said deed recorded March 14, 1968 in Book 168 page 513, Deed Records, Columbia County. RESERVING a non-exclusive right of way over the South 20 ft of the above described tract to be used for ingress and egress for grantors, their heirs and assigns.

PARCEL 2: Beginning at a point which is N 4° 35' 30" W 1223.3 ft and East 1891.3 ft from the Northeast corner of "Rose Hill", Columbia County, Ore, said point being on the left bank of the Columbia River; th along said low water line along said left bank N 31° 33' W a distance of 593.93 ft to the most Easterly Northeast corner of City Ordinance # 1877, recorded Aug 18, 1969 in Book 174 page 343 Deed Records of Columbia County; th S 60° 21' W along said most Easterly North line of said City Ordinance line 208.11 ft to the true point of beginning;

- th S 60° 21' W along the said most Easterly North line of said City Ordinance line 153.57 ft;
- th N 24° 30' 30" E to a point that is N 24° 36' 30" W from the true point of beginning;
- th S 24° 36' 30" E to the point of beginning.





No. 633—WARRANTY DEED (Individual or Corporate).

STEVENS-NESS LAW PUBLISHING CO., PORTLAND, OR., 972.

## WARRANTY DEED

BOOK 206 PAGE 653

KNOW ALL MEN BY THESE PRESENTS, That Charles T. Brownlow

hereinafter called the grantor, for the consideration hereinafter stated, to grantor paid by

Lee C. Applegate

grantee, does hereby grant, bargain, sell and convey unto the said grantee and grantee's heirs, successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or adjoining, situated in the County of Columbia and State of Oregon, described as follows, to-wit:

Beginning at a point which is North 4°35'30" West 1223.3 feet and East 1891.3 feet from the Northeast corner of "Rose Hill", Columbia County, Oregon, said point being on the left bank of the Columbia River; thence along low water line along said left bank North 31°38' West a distance of 266.37 feet; thence South 69°24' West a distance of 227.37 feet; thence North 24°36'30" West to a point on the most Easterly North line of City Ordinance #1877 recorded August 18, 1969 in Book 174, page 343, Deed Records of Columbia County, Oregon; thence South 60°21' West 153.57 feet; thence South 57°16' West 46.43 feet to the TRUE POINT OF BEGINNING of herein described tract, said point being the Northwest corner of tract described in Trust Deed recorded March 30, 1976 in Book 137, page 12, Mortgage Records of Columbia County, Oregon; thence South 68°47'30" West 81.22 feet; thence South 64°47'30" West 73.10 feet; thence South 46°33' West 87.50 feet; thence South 34°02' East to the North line of 50 foot road conveyed to City of St. Helens by deed recorded October 12, 1971 in Deed Book 184, page 11; thence North 69°24' East along the North line of said 50 foot road to the point of intersection with the West line of tract described in Mortgage Book 137, page 12; thence North 24°36'30" West along said West line to the point of beginning.

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DocuSign Envelope ID: 535F486F-E65B-4017-9E50-F24B6BFC6B9



Sale Agreement # 20180328CH

## SEPTIC/ONSITE SEWAGE SYSTEM ADDENDUM

1 Buyer(s) Tracey Hill  
 2 Seller(s) Susan Hatfield  
 3 Property Address 250 BELTON RD, St. Helens, Oregon 97051

4 Buyer and Seller hereby agree the following shall become a part of the Real Estate Sale Agreement.

5 **1. DEFINITION OF ONSITE SEWAGE SYSTEMS:** Generally, onsite sewage (or "wastewater") systems collect and treat wastewater and  
 6 sewage from residences that are not connected to public or community systems. The generic term "septic system," is commonly used to  
 7 describe them. They may include gravity flow systems, sand filter systems, alternative technology treatment systems, seepage pits,  
 8 cesspools and other disposal systems. All such systems shall hereinafter collectively be referred to as an "onsite  
 9 sewage system" or "system". For more information go to Oregon Septic Smart web site:  
 10 <http://www.oregon.gov/deq/Residential/Pages/Septic-Smart.aspx>

11 **2. NOTICES:** (a) Inspections of onsite sewage systems must be performed by a DEQ certified professional; (b) There may be more than  
 12 one onsite sewage system on a property; (c) Not all elements of the onsite sewage system may be located on the property they service; (d)  
 13 Oregon DEQ may require decommissioning of abandoned onsite sewage systems.

14 **3. SELLER REPRESENTATIONS REGARDING ONSITE SEWAGE SYSTEM:** Seller represents that to the best of Seller's knowledge,  
 15 the onsite sewage system serving the Property is: (a) Operating properly; and (b) Complies with all applicable local, state and federal laws.  
 16 These representations shall be in addition to any others made by Seller in the Sale Agreement, other Addenda, and Seller's Property  
 17 Disclosure Statement, if any.

18 **4. ONSITE SEWAGE SYSTEM INFORMATION PROVIDED BY SELLER:** Seller agrees to provide Buyer, with all written documentation  
 19 regarding the onsite sewage system, including all inspections/testing done within the last six (6) months, existing maintenance contracts for  
 20 the onsite sewage system (which may be a DEQ requirement for sand filter and alternative technology systems), and any other material  
 21 information regarding the system within \_\_\_\_\_ business days (three [3] if not filled in) after Buyer and Seller have both signed and  
 22 accepted the Sale Agreement.

23 **5. PROFESSIONAL INSPECTIONS/TESTS/PUMPING/CLEANING REQUESTED BY BUYER:** Buyer requests the following services  
 24 (hereinafter collectively referred as "Service" or "Services") be performed on the onsite sewage system (check all boxes that apply):

25 ☒ Inspections/Tests (specify) \_\_\_\_\_  
 26 ☐ Seller pays ☒ Buyer pays  
 27 ☒ Pumping/Cleaning (specify) \_\_\_\_\_  
 28 ☒ Seller pays ☐ Buyer pays  
 29 ☐ Other (specify) \_\_\_\_\_  
 30 ☐ Seller pays ☐ Buyer pays  
 31 ☐ None. (Buyer should seek competent professional advice before checking this option. Buyer's rights to terminate this  
 32 transaction based upon any test report showing a substantial deficiency in the onsite sewage system are set forth in  
 33 section 6 below. Buyer should review them carefully.)

34 Within \_\_\_\_ business days, (five [5] if not filled in) after Buyer and Seller have signed and accepted this Agreement, the party  
 35 responsible for paying for the above-selected Service shall: (a) Have the Service(s) ordered from a licensed service provider, and  
 36 (b) thereafter, upon receipt, promptly submit the results to buyer.

37 **6. BUYER'S RIGHT TO TERMINATE TRANSACTION:** Buyer shall have \_\_\_\_ business days (ten [10] if not filled in), after the date Buyer  
 38 had received all documents and/or reports from Seller and/or Service provider(s) concerning the onsite sewage system (hereinafter "the  
 39 System Contingency Period"), in which to complete all negotiations with Seller regarding any matters disclosed in any documents and/or  
 40 reports concerning the onsite sewage system.

DS  
 Buyer Initials TAH / Date 4/2/2018 | 10:27 AM PDT

DS  
 Seller Initials SH / Date 4/25/2018 | 10:59:15

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Keller Williams Sunset Corridor, 1915 NW Ambergen Pkwy Ste 250 Beaverton OR 97006  
 Bill Hall

Phone: (503)270-5628 Fax: 503-270-5629  
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250 BELTON RD

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DocuSign Envelope ID: 535F486F-E65B-4017-9E50-F24B6BFC6B9

Sale Agreement # **20180328CH**

41 However, during the System Contingency Period, Seller shall not be required to modify any terms of this Agreement already  
 42 reached with Buyer. Unless a written and signed modification is reached, at any time during the System Contingency Period, Buyer  
 43 may notify Seller, in writing, of Buyer's unconditional disapproval of the system based upon any Documents and Information. In such  
 44 case, all earnest money deposits shall be promptly refunded and this transaction shall be terminated. Buyer shall promptly provide  
 45 Seller with a copy of all Documents and Information not previously turned over to Seller. If Buyer fails to provide Seller with written  
 46 unconditional disapproval by 5:00 p.m. of the final day of the System Contingency Period, Buyer shall be deemed to have accepted  
 47 the condition of the onsite sewage system. Note that if, prior to expiration of the System Contingency Period, written agreement is  
 48 reached with Seller regarding ALL Buyer's requested repairs to the onsite sewage system, the System Contingency Period shall  
 49 automatically terminate, unless the parties agree otherwise in writing. Termination of this transaction shall not excuse either party  
 50 from paying for any Service they agreed to be responsible for in Section 5, above.

51 **7. BUYER'S ACKNOWLEDGMENT:** Buyer acknowledges that by closing this transaction, it shall mean that Buyer is satisfied with all  
 52 Documents and Information, received pursuant to this Septic/Onsite Sewage System Addendum. Buyer understands that while Seller has  
 53 made certain representations regarding the condition of the onsite sewage system, they do not represent a guarantee or warranty of future  
 54 performance. Events may occur that can change the condition of the system after it has been inspected. All Documents and Information  
 55 and other such information should be viewed in this light. Buyer acknowledges that Buyer has not received or relied upon any oral or  
 56 written statements regarding the onsite sewage system made by Seller or any real estate agent not expressly contained in the Real Estate  
 57 Sale Agreement or this Addendum. Neither Seller's nor Buyer's Agents are experts in onsite sewage systems and should not be relied upon  
 58 to provide opinions, advice or information concerning their current condition or future performance.

59 DocuSigned by: Tracey A. Hill Date 4/2/2018 | 10:27 AM PDT DocuSigned by: Susan Hatfield Date 4/25/2018 | 10:59:15  
 Buyer Tracey Hill Seller Susan Hatfield  
 60 Buyer \_\_\_\_\_ Date \_\_\_\_\_ ← Seller \_\_\_\_\_ Date \_\_\_\_\_ ←  
 61 Buyer's Agent **Bill Hall** Seller's Agent **Brett Starr**  
 62 Buyer's Agent's Firm **Keller Williams Sunset Corridor** Seller's Agent's Firm **Keller Williams-PDX Central**

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250 BELTON RD



## INVOICE

## BLUE HERON SEPTIC AND DRAIN SERVICE, INC.

293 Sunset Blvd. St. Helens, Oregon 97051

(503) 396-5087

DEQ Licence #38835

Susan Hatfield  
250 Belton Rd  
St. Helens, OR

Date	Description	Amount Due
	Septic Tank	
	Pumps 1000 Gal	400 <sup>00</sup>
4/5/18	Pump & Filter Service	125 <sup>00</sup>
Total		525 <sup>00</sup>

FILE

Item 1.

Jacob Graichen

AP.1.20

**From:** Daniel Kearns <dan@reevekearns.com>  
**Sent:** Monday, June 08, 2020 3:40 PM  
**To:** Jacob Graichen  
**Cc:** Jeffrey Seymour  
**Subject:** Re: [Email from external sender] Schlumpberger Land Partition Appeal - Anticipated Order of Testimony

Jacob. You are correct that there can be no narrowing of the issues until there has been an evidentiary hearing. In relevant part, OR 227.175(10)(a) provides that:

(D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the city. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.

(E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:

(i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;

(ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and

(iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.

This is also the gist of LUBA's holding in *Crowley v. City of Bandon*, 48 Or LUBA 545, 549 (2004) ("For purposes of this appeal, the following features of ORS 227.175(10)(a) are the most important. First, the city must provide notice of a permit decision that is rendered without a public hearing to the same persons who would have been entitled to notice of a public hearing, if a public hearing had been held before the permit decision was rendered. Second, those persons who are given notice of the decision and, in addition, any persons who are "adversely affected or aggrieved" by the decision must be given the opportunity to file a local appeal. Third, if such a local appeal is filed, the appellant must be given a *de novo* hearing. And finally, the city may not limit the issues in that *de novo* hearing to the issues raised in the local notice of appeal.")

The applicant, like everyone else, has the right to ask for and receive at least a 7-day open record following the hearing. Plus the applicant has 7 days after the record closes to everyone else for final rebuttal. That's how the applicant responds to anything new or surprising that might arise at the hearing.

BTW, please accept this as my request that the Planning Commission leave open the record for at least 7 days after tomorrow evening's hearing for appellant's submission of additional argument and evidence. Please include this e-mail exchange as part of the record of this matter. Thank you.

Daniel Kearns  
REEVE KEARNS PC  
621 SW Morrison Street  
Suite 510

Portland, OR 97205  
 Telephone: (503) 997-6032  
 Voice Mail: (503) 225-1127

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---

**From:** Jeffrey Seymour <jeffseymour1@earthlink.net>  
**Date:** Monday, June 8, 2020 at 3:12 PM  
**To:** 'Jacob Graichen' <jacob@ci.st-helens.or.us>, Daniel Kearns <dan@reevekearns.com>  
**Subject:** RE: [Email from external sender] Schlumpberger Land Partition Appeal - Anticipated Order of Testimony

Hi Jacob –

In response to your comments on the de novo hearing, how are supposed to prepare a response to an appeal if we don't know what the issues on appeal are?

In civil law, a de novo hearing is one where the appellate body considering the appeal does so on the record developed at the lower decision-making body. It is not a situation where the appellant can raise new issues before the appellate body that were not raised below and not the subject of the appeal.

If appellant raises new issues before the Commission that were not part of the notice of appeal, how are we supposed to respond to it in front of the Commission?

Jeff

### Jeffrey S. Seymour

Attorney at Law  
 4504 SW Corbett Ave., #200  
 Portland, OR 97239  
 (503) 477-9214 phone  
 (503) 222-0693 fax  
[jeffseymour1@earthlink.net](mailto:jeffseymour1@earthlink.net)  
[www.jeffseymourlaw.com](http://www.jeffseymourlaw.com)

---

**From:** Jacob Graichen <jacob@ci.st-helens.or.us>  
**Sent:** Monday, June 08, 2020 1:54 PM  
**To:** Jeffrey Seymour <jeffseymour1@earthlink.net>; 'Daniel Kearns' <dan@reevekearns.com>  
**Subject:** RE: [Email from external sender] Schlumpberger Land Partition Appeal - Anticipated Order of Testimony

Please note this hearing is de novo. As to people's arguments, that will be up to them, but as this is de novo and the City's rules do not prohibit new issues, issues beyond those identified on the notice of appeal are possible.

Jacob Graichen, AICP, City Planner  
 City of St. Helens



**From:** Jeffrey Seymour <[jeffseymour1@earthlink.net](mailto:jeffseymour1@earthlink.net)>

**Sent:** Monday, June 08, 2020 9:57 AM

**To:** 'Daniel Kearns' <[dan@reevekearns.com](mailto:dan@reevekearns.com)>; Jacob Graichen <[jacob@ci.st-helens.or.us](mailto:jacob@ci.st-helens.or.us)>

**Subject:** RE: [Email from external sender] Schlumpberger Land Partition Appeal - Anticipated Order of Testimony

Hello Jacob and Dan –

Thank you for the information.

In terms of what to expect from Appellant, I presume her evidence for the Commission will be limited to the 3 areas of appeal she identified in her Notice of Appeal.

My clients and I will be there, in person, at the hearing.

Jeff

### **Jeffrey S. Seymour**

Attorney at Law

4504 SW Corbett Ave., #200

Portland, OR 97239

(503) 477-9214 phone

(503) 222-0693 fax

[jeffseymour1@earthlink.net](mailto:jeffseymour1@earthlink.net)

[www.jeffseymourlaw.com](http://www.jeffseymourlaw.com)

---

**From:** Daniel Kearns <[dan@reevekearns.com](mailto:dan@reevekearns.com)>

**Sent:** Friday, June 05, 2020 4:14 PM

**To:** Jacob Graichen <[jacob@ci.st-helens.or.us](mailto:jacob@ci.st-helens.or.us)>

**Cc:** Jeffrey Seymour <[jeffseymour1@earthlink.net](mailto:jeffseymour1@earthlink.net)>

**Subject:** RE: Schlumpberger Land Partition Appeal - Anticipated Order of Testimony

Thx Jacob. I will keep you and Jeff posted on what to expect from the appellant.

Daniel Kearns  
REEVE KEARNS PC  
621 SW Morrison Street  
Suite 510  
Portland, OR 97205  
Telephone: (503) 997-6032  
Voice Mail: (503) 225-1127

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**From:** Jacob Graichen <[jacob@ci.st-helens.or.us](mailto:jacob@ci.st-helens.or.us)>  
**Sent:** Friday, June 05, 2020 4:13 PM  
**To:** Daniel Kearns <[dan@reevekearns.com](mailto:dan@reevekearns.com)>; Jeffrey Seymour <[jeffseymour1@earthlink.net](mailto:jeffseymour1@earthlink.net)>  
**Subject:** Schlumpberger Land Partition Appeal - Anticipated Order of Testimony

Gentlemen,

Here is the order of testimony I foresee for this public hearing:

1. Staff report (City Planner)
2. Appellant's testimony (Kearns and friends)
3. Applicant's testimony (Seymore and friends)
4. Public comment (public at large)
  - a. Testimony in favor
  - b. Neutral testimony
  - c. Testimony in opposition
5. Appellant's response (Kearns and friends)
6. Applicant's response (Seymore and friends)

This is what we've done for 3<sup>rd</sup> party appeals like this one in the past and I want you to know what to expect.

Please let me know if you have any comments or concerns.

**Jacob Graichen, AICP, City Planner**  
**City of St. Helens**  
[jacobg@ci.st-helens.or.us](mailto:jacobg@ci.st-helens.or.us)  
(503) 397-6272



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**JEFFREY S. SEYMOUR**  
**ATTORNEY AT LAW**

Item 1.

4504 SW CORBETT AVE, #200  
PORTLAND, OR 97239  
TEL (503) 477-9214  
E-MAIL jeffseymour1@earthlink.net

June 4, 2020

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

Attn: Jacob Graichen, Planning Director

Subj: Partition PT.1.20 (Schlumpberger); applicants' response to Notice of Appeal

Mr. Graichen:

I represent Andrew and Lindsay Schlumpberger concerning the subject Partition application. This letter is our response to the Notice of Appeal, filed on May 1, 2020, by Tracey Hill, Trustee of the Tracey A. Hill Family Trust. Thank you for forwarding this letter and exhibits to the St. Helens Planning Commission for consideration at their June 9, 2020 meeting.

The Notice of Appeal specified three areas of appeal:

1. Tree and vegetation removal
2. Subsurface sewage disposal system
3. Road access.

**1. Tree and vegetation removal** Applicant's tree plan adequately addresses all vegetation removal concerns, and complies with all provisions of SHMC Sections 17.40 and 17.132. Appellant's claim should be denied.

In her appeal, Appellant claims "The application should be denied until the applicant submits a tree plan required by SHMC chapter 17.40 that shows and accounts for the unpermitted tree and vegetation removal."

Previously, Applicants had improperly removed several trees from their property. Applicants also removed some invasive blackberries. The City and Applicants subsequently had discussions about the issue.

Applicants have provided as Exhibit 1 their Tree Plan, which is part of what Exhibit 1 calls the "Tree Plan and Road Improvement Plan". It notes the types and sizes of trees to be planted, and specifically calls out any stumps on the property. The Tree Plan complies with SHMC sections 17.40 and 17.132. To the extent the Tree Plan is not self-explanatory, Applicant Andrew Schlumpberger will be able to testify in response to any questions or comments raised.

Prior to any tree removal or planting, Applicants will obtain a tree permit, as required by SHMC 17.132.



**2. Subsurface sewage disposal system Applicant and Appellant will have to initially resolve this issue outside of St Helen's Partition process.**

In her appeal, Appellant claims "As a matter of law, the existence of Ms. Hill's drainage easement precludes this development, and there is no evidence in the record that the applicant has useable access to Parcel 2."

Appellant has an old recorded easement over Applicants' property for an underground septic drain field. In the 1990s, the prior owners of both Applicants' and Appellant's properties hooked their properties up to the City's public sewage system. At the time of connection to the sewer system, the septic drain field on Applicants' property was destroyed by filling it in with sand and gravel, and disconnecting the pipe system between Appellants property and the drain field. The prior drain field on Applicants' property now has mature fir trees and other vegetation growing on it.

SHMC section 13.14.160(4) provides that the owner of a house with access to the public sewer system must connect with the public sewer system. Conversely, SHMC section 13.14.170(1) provides that a homeowner may only connect to a private wastewater system if public sewer is not available.

Under Oregon law, a recorded easement can be extinguished in several ways. In this case, Appellant's easement has been extinguished by (1) destruction, (2) abandonment, and (3) impossibility. Here, the reason for Appellant's recorded easement has been destroyed, the property predecessors then abandoned the easement, now for well over 20 years, and City code requires hookup to City sewer and prohibits a septic drain field on Applicants' property, thus making it impossible for a drain field to be located there.

The applicants, Andrew and Lindsay Schlumpberger, have been working with Appellant's counsel to try and work out a voluntary release of Appellant's recorded lease. In spite of the reasons under Oregon law for the easement extinguishment, Appellant refuses to voluntarily release the recorded easement.

As a result, Applicants are required to file a lawsuit against Appellant to declare the easement extinguished and quiet title. This could take months to resolve. In the interim, Applicants understand this particular condition of approval cannot be met. They will again address this item in the partition process upon resolution of the lawsuit.

**3. Road access The Administrator's condition for road safety improvement is sufficient. Appellant's claim should be denied.**

In her appeal, Appellant claims "The Administrator's suggested mitigation of a single turn-out near the blind curve on Belton Road does not remedy the life safety hazard, nor does it satisfy the Code's requirements. Unless this application proposes to comply with the 20-foot pavement width requirement in SHMC 17.84.070, it must be denied."

The Administrator's decision conditioned the Partition approval on construction of a turnout on Belton road, and did not require Applicants to meet the SHMC road requirements. Applicants believe any additional conditions in addition to the turnout are not required, for two reasons. First, the turnout is a sufficient modification of the road to keep it as safe as it is before the additional development. Second, the cost to redevelop Belton Road to bring it up to code would be excessive and grossly out of proportion to the impact of the one lot development.

A. Road Safety

While Applicants agree Belton Road does not meet code requirements, it is nevertheless safe for public access, and the addition of one additional residence will not materially impact the safety of the road. Exhibit 1 includes the Road Improvement Plan, to improve the road to meet the condition in the Amended Partition Approval. This is the addition of a 24' x 30' turnout at a 90 degree corner near Appellant's property.

Three Exhibits are included to demonstrate the safety of Belton Road. Exhibit 2 is a letter from Captain Mike Gorsuch, of Columbia River Fire and Rescue. This is the agency charged with fire protection in the area of the subject properties. Captain Gorsuch specifically notes no record of any vehicle accidents on Belton Road in the area. He further states his fire vehicles and ambulances will have access to the various properties, with no changes to the road width. He does agree with the City recommendation for the vehicle turnout, but has no other objections to the proposed development.

Exhibit 3 and 4 are both letters from local residents. They express the comments that Belton Road has a good safety record, and do not believe the development will diminish the safety of travel on Belton Road.

Finally, the Fire Marshall's Division Chief, Jeff Pricher submitted a letter included in the staff report at page 10 of 17. He is requiring sprinklers, signage, and any necessary permits. However, he makes no mention of any vehicle accidents or other safety issues with Belton Road. Finally, he imposes no condition to widen it, or make any other improvements for fire vehicle access.

B. The cost to redevelop Belton Road to bring it up to code would be grossly out of proportion to the impact of the one lot development.

Currently, it is estimated the cost to build a 24' x 30' turnout is \$15,000 - \$25,000. This, in itself is a large expense for Applicants. The benefits everyone using Belton Road - the general public. But, Applicants are willing to accept that condition as reasonably related to their development. They will work with the City and contractors to keep these costs economically feasible.

However, the cost of rebuilding Belton Road to meet current code is way out of proportion to the single additional parcel created out of the partition. Exhibit 5 is an estimate from Triton Lawn and Yard Maintenance to do that road improvement. It's \$182,300, and does not include the additional cost of breaking, drilling or blasting rock, and does not include any potential utility line relocation.

It is expected the additional work could cost an additional \$100,000 or more, pushing the total cost to upwards of \$300,000. This is an offsite improvement on a road that is not owned by Applicants, but by the general public. If there are 10 houses currently served by Belton Road, including Applicants, they are being required to pay for 100% of the improvement that benefit the public, while they only own 10% of the affected properties.

It is Applicants' position that requiring improving Belton Road to code standards, in addition to the turnout requirement, would approach a taking. The Appellant has failed to meet her burden of establishing that the proposed road improvement was necessary to offset the increased traffic which would be caused by the proposed development.

### **Conclusion**

Of the three issues on appeal raised by Appellant, Applicants will agree to remove resolution of the easement condition issue from the City's partition process until resolution with Appellant outside of the process, either voluntarily or through litigation.

On the issues of the tree plan and Belton Road code compliance, Applicants have demonstrated Appellants claims on these issues should be denied, and the conditions levied by the Administrator in his Amended Approval should be approved and adopted by the Planning Commission.

Thank you for your review of this response.

Sincerely,

*Jeffrey S. Seymour*  
Jeffrey S. Seymour

Copy: Client  
D. Kearns, attorney



Notes:

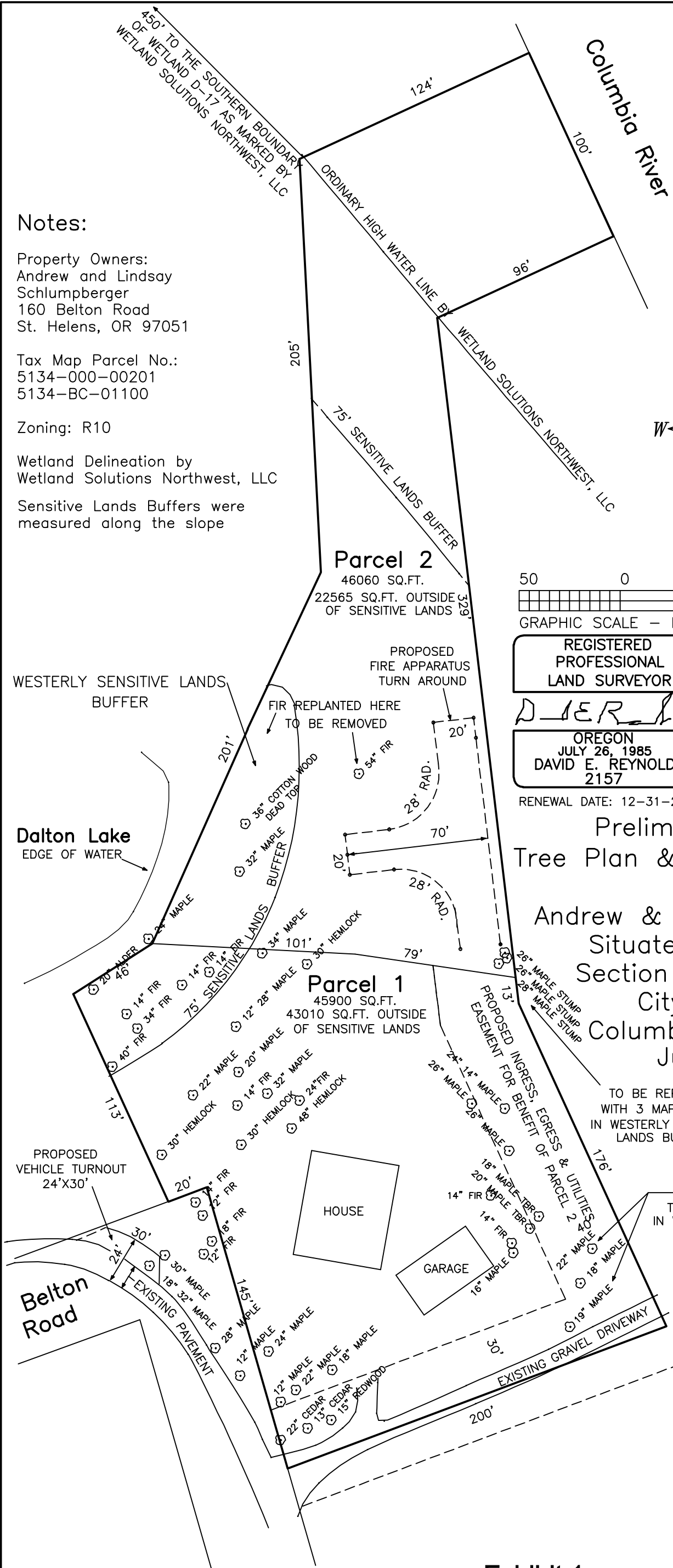
Property Owners:  
Andrew and Lindsay  
Schlumpberger  
160 Belton Road  
St. Helens, OR 97051

Tax Map Parcel No.:  
5134-000-00201  
5134-BC-01100

Zoning: R10

Wetland Delineation by  
Wetland Solutions Northwest, LLC

Sensitive Lands Buffers were  
measured along the slope



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

DAVID E. REYNOLDS  
OREGON  
JULY 26, 1985  
2157

RENEWAL DATE: 12-31-2020

Reynolds  
Land Surveying, Inc.  
32990 Stone Road  
Warren, Oregon 97053  
(503) 397-5516

Preliminary Partition Plat  
Tree Plan & Road Improvement Plan  
For  
Andrew & Lindsay Schlumpberger  
Situated In The N.W. 1/4  
Section 34,T.5N.,R.1W.,W.M.  
City of St. Helens  
Columbia County, Oregon  
June 1, 2020

Tree Plan

- ⊙ Denotes tree with species and size as noted.
- Trees to be removed are as noted and will be replaced with same species in Westerly Sensitive Lands Buffer.
- Existing stumps are as noted and will be replaced with same species in the Westerly Sensitive Lands Buffer.
- Existing trees within 20' of any construction areas will be protected with 4' construction zone safety fencing.



# Columbia River Fire & Rescue

Item 1.

## Fire Prevention Division

270 Columbia Blvd \* St Helens, Oregon \* 97051  
Phone (503)-397-2990 \* [www.crfr.com](http://www.crfr.com) \* FAX (503)-397-3198

To whom this may concern:

Belton Road in St. Helens Oregon has a 50' street right of Way, with approx. 12' to 15' of pavement. It does meet the current standards as far as street width but not for pavement width. The reason for this is the topography and the rocky terrain in that area.

St. Helens has many narrow streets like this.

This has not been a problem thus far for public safety, as we are still able to access the private dwellings via fire trucks and ambulances. Any new dwelling for the most part, must be either sprinklered or have an approved turn around. We do not have any knowledge or any record of any motor vehicle accidents occurring on Belton Rd. in recent years. Most residents drive slowly due to the skinny streets and brush that is found in that area of the City.

Although we agree there is sufficient access to service the existing households in that area, a turn out to provide improved viewing of that 90-degree turn would be beneficial to public safety, not only for the new proposed dwelling but for the residents that live in that area.

Please don't hesitate to contact me by phone at 503-556-0406 or email [gorsuchm@crfr.com](mailto:gorsuchm@crfr.com).

Captain Mike Gorsuch

To whom it may concern:

We have lived off of Belton Rd on Greycliff Rd for many years, our home is one of the furthest homes serviced by the City's Step system, we live just down the road from the Schlumpberger's home, where we have not had any problems with the City's Step system, nor do we have any issues with the Schlumpberger's partitioning and building a new home closer to the river. As they have over 2 acres and with it meeting all the zoning requirements we do not see any reason why they should not be able to build a new home. As far as the safety of Grey Cliff Road and Belton Rd, we do not know of any accident that has occurred on either of these streets, as all of the neighbors drive at a safe speed due to the topography and the skinny streets that are present in this area.

Date 06/02/2020 Signed Larry R Hough

Name LARRY HOUGH  
Address 575 GREY CLIFFS DRIVE  
St HELENS, OR 97051

Ph# 503-366-0434



Dear Planning Commission,


As a member of the community served by belton road I want to express my approval for the land partition, proposed by my neighbors Andrew and Lindsay Schlumpberger.

I have lived in the community where the new partition is proposed for many years. In this time I have seen changes occur including the construction of new homes and changes to existing terrain and roadways.

While it is known that this community is served by a long and narrow road, this neighborhood is also known to be safe. Many drivers navigate this roadway daily with little to no difficulty including the addition of delivery trucks and/or construction vehicles (only one single vehicle accident in last 30 years that I can recall).

I welcome the proposal of the Schlumpberger's new home and do not personally foresee any problems from the creation of one more home served by belton road.

Sincerely,


105 Belton Road  
St. Helens, OR 97051

Triton Lawn & Yard Maintenance  
 PO Box 1206  
 Rainier, OR 97048 US  
 503-793-7597  
 nealk13@gmail.com

# Estimate

Item 1.



## ADDRESS

Andrew Shlumpberger  
 160 Belton Rd  
 St Helens, OR 97051

ESTIMATE #	DATE	
1023	05/27/2020	

ACTIVITY	QTY	RATE	AMOUNT
<b>2-Equipment:2-Excavator</b> Move 2 fire hydrants from proposed Belton road right of way. This excludes cost associated with breaking, drilling or blasting rock.		35,000.00	35,000.00
<b>2-Equipment:2-Excavator</b> Remove 14 trees from proposed Belton road right of way. Including stumps and roots.	1	18,000.00	18,000.00
<b>2-Equipment:2-Excavator</b> Prepare roadway surface to Columbia County Private road standards. This excludes any cost associated with breaking, drilling or blasting of rock.	1	45,000.00	45,000.00
<b>2-Equipment:2-Excavator</b> Pave road to Columbia County Private Road standards.	1	60,000.00	60,000.00
<b>1-Rock:3. 3 inch minus</b> Base rock for road widening	1	7,000.00	7,000.00
<b>1-Rock:1. 3/4 inch minus</b> Top Coat for road widening	1	1,800.00	1,800.00
<b>5-Other:Supplies</b> New hydrants to meet fire department code	1	3,500.00	3,500.00
<b>2-Equipment:1-Solo Truck</b> Haul rock to job site	1	6,000.00	6,000.00
<b>5-Other:Disposal Fee</b> Disposal of fill, wood, waste and stumps	1	5,000.00	5,000.00

TOTAL

**\$181,300.00**

Accepted By

Accepted Date

**CITY OF ST. HELENS PLANNING DEPARTMENT  
STAFF REPORT  
Appeal AP.1.20 of Partition PT.1.20**

**DATE:** June 2, 2020  
**TO:** Planning Commission  
**FROM:** Jacob A. Graichen, AICP, City Planner

**APPELLANT:** Tracy A. Hill for Tracy A. Hill Family Trust  
**APPLICANT:** Andrew and Lindsay Schlumpberger  
**OWNER:** Andrew and Lindsay Schlumpberger

**ZONING:** Suburban Residential, R10  
**LOCATION:** 160 Belton Road; 5N1W-34BC-1100 and 5N1W-34-201  
**PROPOSAL:** 2-parcel Partition

**SITE INFORMATION / BACKGROUND**

The subject property is located along the Columbia River, Dalton Lake and Belton Road. Belton Road provides access. The Planning Administrator originally approved the Partition request PT.1.20 on March 25, 2020. The City received various comments about that decision and the Planning Administrator issued an amended decision on April 15, 2020 in response to some of those comments. An appeal of that decision was filed by the appellant on May 1, 2020.

**PUBLIC HEARING & NOTICE**

Hearing dates are as follows: June 9, 2020 before the Planning Commission.

Notice of this proposal was sent to surrounding property owners within 300 feet of the subject property(ies) on May 21, 2020 via first class mail. Notice was sent to agencies by mail or e-mail on the same date. Notice was published in the The Chronicle on May 27, 2020.

**AGENCY REFERRALS & COMMENTS**

As of the date of this staff report for the appeal, the following agency referrals/comments have been received:

**Fire Marshall:** see attached letter dated May 29, 2020 (received June 1, 2020).

**APPLICABLE CRITERIA, ANALYSIS & FINDINGS**

**\*\*Important: this report is not a stand-alone document and is meant to be reviewed with the original decision.\*\***

See PT.1.20 *Amended Decision*, attached. This report focuses on the issues the appellant raises as part of this appeal.



\* \* \*

The appellant raises three general issues: 1) tree and vegetation removal, 2) subsurface sewerage disposal system (septic drainfield) easement, and 3) road access.

### **Tree and Vegetation Removal**

There are two components of this as it pertains to St. Helens' Development Code. The first is Chapter 17.40 SHMC, which protects woody and other native vegetation within significant wetlands and riparian areas and their protection zones. The second is Chapter 17.132 SHMC which requires a tree plan for certain actions, including Partitions, intended to document and preserve trees over 12 inches diameter at breast height or DBH when possible.

### Sensitive Lands Trees and Vegetation

There are two sensitive lands that affect the property. The Columbia River (with 75' upland protection zone required per Chapter 17.40 SHMC) and Wetland D-16, otherwise known as Dalton Lake (with 75' upland protection zone required per Chapter 17.40 SHMC). The preliminary plat shows the protection zoned boundaries based on a professional assessment as required.

However, before the applicant determined these boundaries, they were found to have used heavy equipment within the Dalton Lake protection zone. Staff sent the applicant a violation letter in December 2019, but staff observed little native vegetation disturbance (affecting mostly a heavy infestation of nonnative blackberries) and the applicant ceased such activity. The disturbance was limited to the outer portions of the protection zone. Staff essentially gave the applicant a warning.

These sensitive lands are discussed in the PT.1.20 *Amended Decision*, towards the bottom of page 4 and top half of page 7, mostly. Conditions 4.a and 11 pertain to this issue.

Staff visited the site again on May 29, 2020 and did not observe any obvious new impacts to sensitive lands.

### Tree Plan

The tree plan per Chapter 17.132 SHMC is discussed in the PT.1.20 *Amended Decision* towards the bottom of page 4 and continuing to the top of page 5. It is addressed in the conditions (page 2) per condition 2.a. The applicant provided inadequate information at the beginning of the process and cut trees soon after the initial PT.1.20 decision was issued (before the amended decision). As such, condition 2.a on the *Amended Decision* includes the consideration of stumps for trees, since per 17.132.025(3):

(3) Trees removed within the period of one year prior to a development application listed above will be inventoried as part of the tree plan above and will be replaced according to SHMC 17.132.070(4).

Conditions 7.a and 10 also pertain to the tree plan requirements of Chapter 17.132 SHMC.

Staff visited the site again and observed some larger trees (<6) outside of sensitive lands that have been removed.



Two photos from the same location on the north end of the subject property looking southward towards the home at 160 Belton Road.

Other than differences based on the time of year, some removed trees (assumed to be Big Leaf Maples by staff) have been cut in between this time period.

THE SENSITIVE LAND areas are to the far right of and behind THE PHOTOGRAPHER generally.







Two photos showing the same area as those on the previous page, but from the south side of the subject property looking north.

The Columbia River can be clearly seen. Dalton Lake is not as visible but is located to the left behind the hill line.

The patches of sand in the grass in the background show some of the heavy equipment impacts in the Dalton Lake protection zone.

The protection zone is to the far left of said sand patches.







THIS IS THE  
AREA OF  
Dalton Lake  
protection zone  
IMPACT  
MENTIONED IN  
this report.

THIS AREA IS  
HEAVILY  
infested with  
nonnative  
BLACKBERRY  
PLANTS.

Only the outside of  
THE 75' PROTECTION  
ZONE  
zone was affected  
based on staff  
OBSERVATION.

Question for the Commission is if the conditions of the decision adequately addresses these issues, if the applicable conditions should be revised, or if this is basis for denial.

### **Subsurface sewerage disposal system (septic drainfield) easement**

There is a large drainfield easement on the subject property for the benefit of the appellant's property. This is a substantial encumbrance to access and utilities and created a legal wall of sorts between proposed Parcels 1 and 2, such that Parcel 2 has no access for vehicles or utilities.

This is a private matter as it is not a public easement, but the easement is in the way so the City has to consider it in the Partition decision. This easement is discussed on page 6 in the PT.1.20 *Amended Decision*. Condition 2.b basically says the applicant needs to get rid of the easement or find a way around it via easement(s) on other property. If neither is possible, the Partition cannot be completed.

Does the Commission feel this is already adequately addresses in the conditions or should it be a basis of denial as the appellant suggests? Please remember it is not the Planning Commission's role to determine if the easement has been "abandoned." Rather, the Commission's focus is how the easement impacts the fate of the partition. The easement's status is anticipated to be resolved outside of land use procedures.

### **Road Access**

Much of Belton Road is predominately 11' wide and doesn't meet any public or private road standard. This is discussed at the bottom of page 5, the top of page 6, and pages 9-10 of the PT.1.20 *Amended Decision*. Condition 2.c and 3.a address Belton Road. Be careful not to

confuse this with the easement discussion outside of the Belton Road right-of-way in the report. See attached map that shows the properties that depend on Belton Road (after the Elk Lodge driveway) for sole access in or out of this neighborhood. It also shows road widths at various locations.

Staff requires a turn-out to address the additional traffic this Partition will create on this largely one-lane road.

Belton Road is public right-of-way. Its is classified as a local street, which normally requires a roadway width of 34 feet. However, under the unusual circumstances of 10 dwellings currently being accessed (starting from just after the Elks Lodge driveway at 350 Belton Road) from what is essential a driveway, with the potential for more, the Commission could consider driveway standards. For example 3-6 dwellings requires a 20 pavement width, whereas 3-19 apartments (for comparison) requires 24 feet per SHMC 17.84.070.

The question for the Commission on this matter is if the existing conditions address this adequately given the existing circumstances and magnitude of the proposal, if more improvements should be required, or if the Partition should be denied based on inadequate access. Note that Belton Road is only one way in and out for the existing 10 dwellings including the one at 160 Belton Road (the subject property).

### CONCLUSION & RECOMMENDATION

#### The Commission has a few options:

1. Affirm the PT.1.20 *Amended Decision* (i.e., uphold the decision being appealed with no changes);
2. Reverse or deny the decision; or
3. Modify the decision (e.g., change the conditions of approval).

\* \* \*

#### Attachment(s): Preliminary plat with City Planner notes

Map showing number of existing dwellings currently accessed via Belton Road after the Elks Lodge driveway and road width measurements

Fire Marshall letter dated May 29, 2020 (received June 1, 2020)

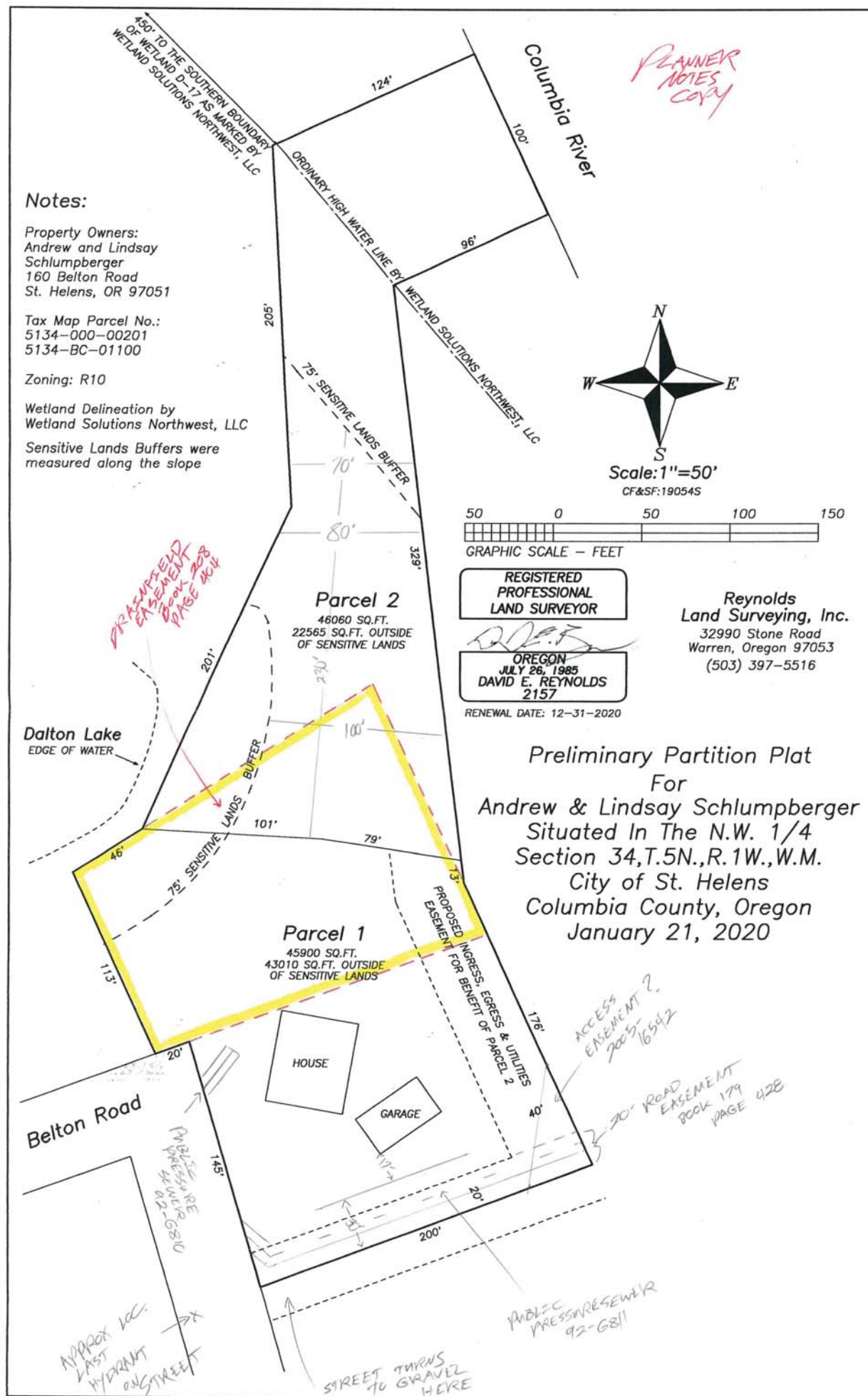
Notice of appeal letter dated May 1, 2020 from Reeve Kerns PC (received May 1, 2020)

PT.1.20 *Amended Decision*, with attachments:

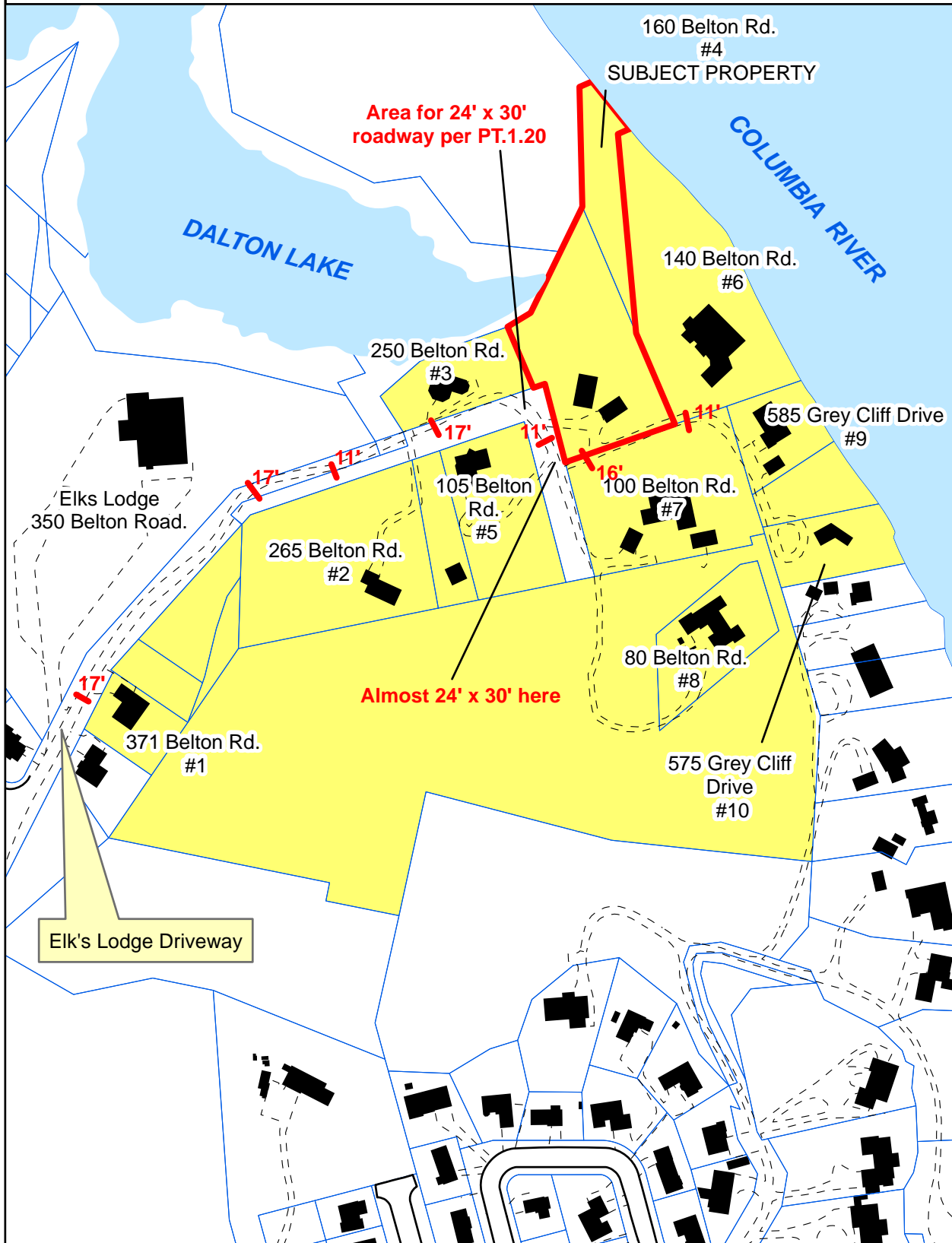
- Preliminary plat

- Engineering report from Schlumpberger Consulting Engineers, Inc. dated December 13, 2019 regarding STEP system
- Preliminary plat showing easement recorded in 1976 as Book 208, Page 404 Columbia County Clerk's records
- Environmental Assessment from Wetland Solutions Northwest, LLC dated January 30, 2020
- Letter from Tracey A. Hill dated April 6, 2020
- Letter from VaNatta, Petersen & Anderson, Attorneys At Law, dated April 7, 2020
- Letter from Robin Nunn dated April 8, 2020





**FILE: AP.1.20**    Number of Existing Dwellings Currently Accessed Via Belton Road  
**ATTACHMENT**    After The Elks Lodge Driveway & Road Width Measurements





# FIRE MARSHAL

Columbia River Fire & Rescue / Scappoose Fire District



Date: 05/29/2020

Andrew Schlumpberger

RE:

Belton Road Development Partition PT.1.20

Andrew Schlumpberger

Property Description: 160 Belton Road (5N1W-34BC1100 & 5N1W-43-201)

RECEIVED  
JUN 1 2020  
CITY OF ST. HELENS

Mr. Schlumpberger:

I received your request to review the subject property identified above and provide comments for the partition that is being requested. This is in accordance to item number 6 of the conditions listed by the City of St. Helens in the Land Use Decision. The recommendations by the fire district are listed below and are in accordance with fire district ordinances and the Oregon Fire Code (OFC).

1. New construction as proposed will not conform to the OFC. Specifically, Section 503 (Access to buildings) and Appendix "D". The tradeoff for the access challenge will be the following conditions:
  - i. The building shall be protected by a residential automatic sprinkler system meeting all provisions of NFPA 13D.
  - ii. Signage that clearly identifies the location of the new structure is required.
2. All items that are identified in the Fire code Guide (Adopted by ordinance) need to be adhered to and completed by final occupancy and inspection of the building. This includes the adopted county driveway standard, included as part of the driveway permit process.
  - i. Driveway Permit
  - ii. Address Signs
3. The fire district would like to request to have an opportunity to conduct operational training on the building prior to occupancy. This will consist of tours to become familiar of the building layout as well as pre plan our response operations due to some of the access challenges.

Should you have any questions about anything else, please do not hesitate to give me a call.

Sincerely,

Jeff Picher

Division Chief

Fire Marshal (CRF&R / SRFD)

Columbia River Fire and Rescue / Scappoose Rural Fire District  
270 Columbia Blvd. St Helens, OR 97051 / 52751 Columbia River Hwy (P.O.BOX 625) Scappoose OR, 97056  
(503) 397-2990 / (503) 543-5026



# Reeve Kearns PC

Attorneys at Law

510 American Bank Building  
621 S.W. Morrison Street  
Portland, Oregon 97205  
Voice Mail: 503-225-1127  
Email: dan@reevekearns.com

Daniel H. Kearns  
Direct Dial: 503-997-6032

May 1, 2020

St. Helens Planning Dept.  
Attn: Jacob Graichen  
St. Helens City Hall  
265 Strand Street  
St. Helens, OR 97051

**VIA HAND DELIVERY**

**Re: Notice of Appeal – Partition PT.1.20 (Schlumpberger)**

Dear Mr. Graichen:

This firm represents Tracey Hill, the appellant in this appeal, and I hereby submit the following notice of appeal of the Administrator's decision in the above-mentioned matter. The information required for this appeal notice by SHMC 17.24.340 is set forth below.

## **I. The Proposal and Challenged Decision:**

This application seeks to partition a 2.11-acre, R10 zoned parcel into two new buildable parcels.<sup>1</sup> The parent parcel is already developed with a single-family dwelling (Parcel 1), and this proposal will create an additional buildable lot (Parcel 2). The parent parcel abuts Dalton Lake and the Columbia River and is extensively encumbered by sensitive lands and buffers. The Administrator approved the partition on April 15, 2020 in a Type II decision with conditions that stated a May 1, 2020 appeal deadline.

## **II. The Parties:**

Owner/Applicant.....Andrew and Lindsay Schlumpberger  
160 Belton Road  
St. Helens, OR 97051

Appellant.....Tracey A. Hill for Tracey A. Hill Family Trust  
250 Belton Road  
St. Helens, OR 97051

Appellant's Attorney..Daniel Kearns, OSB #893952  
REEVE KEARNS PC

**RECEIVED**  
**MAY 1 2020**  
**CITY OF ST. HELENS**

<sup>1</sup> 5N1W-34BC-1100 and 5N1W-34-201, street address: 160 Belton Road

Reeve Kearns P.C.

May 1, 2019

Page 2

621 SW Morrison St., Suite 510  
Portland, OR 97205

### **III. Appellant's Standing:**

Appellant Tracey Hill owns and lives on an adjacent parcel within the City's notice range for this proposal and submitted timely written comments (dated April 6, 2020) in opposition to the partition proposal. Ms. Hill stands to be directly impacted by this proposal because the new parcel (Parcel 2) will allow for the development of a new dwelling within sight and sound of Ms. Hill's home, and she is therefore adversely affected and aggrieved by the Administrator's decision. Additionally, the applicant is aware of a recorded drainfield easement that Ms. Hill holds over a significant portion of Parcels 1 and 2, and the development of Parcel 2 will destroy and thereby violate her easement. As such, Ms. Hill has standing to appeal the Administrator's decision under SHMC 17.24.290(1).

### **IV. Appeal Arguments:**

The applicant, who resides in the house on Parcel 1, has already removed multiple mature trees from the protective Sensitive Lands Buffer without permits, and has removed other non-woody vegetation with heavy equipment and sprayed herbicide on vegetation adjacent to the lake, again with no permits in violation of SHMC chapter 17.40. This adversely affects and aggrieves Ms. Hill and her use and enjoyment of her home and property and views of Dalton Lake, the surrounding wetlands and the Columbia River. Approval of a second home site on Parcel 2 for the applicants will also significantly and negatively impact the environment and Ms. Hill's property because of the house development and attendant environmental damage that will result. The unpermitted tree and vegetation removal are noted in the Administrator's decision at pp 4-5, yet there is no requirement that the violations be mitigated, or the damage corrected. The application should be denied until the applicant submits a tree plan required by SHMC chapter 17.40 that shows and accounts for the unpermitted tree and vegetation removal.

Ms. Hill holds a recorded septic drainfield easement for her property that encumbers the parent parcel in this application and covers significant portions of proposed Parcels 1 and 2, as well as the access easement proposed to serve Parcel 2. The applicant incorrectly claims that Ms. Hill's drainfield easement has been abandoned, relinquished or is somehow not material. To the contrary, Ms. Hill's drainfield easement is recorded with title to the parent parcel in this application; Ms. Hill has not relinquished or abandoned it, has no intention of doing so, and her easement is fully and legally enforceable. Ms. Hill's prior (April 6, 2020) comments on the application made clear that this drainfield easement was a back-up for an on-site septic system and a guarantee her home would be inhabitable in the event the city's STEP system failed. In her comments, she also stated her intent to enforce this easement and that construction of a house or an access driveway serving Parcel 2 would destroy its ability to support a septic drainfield and would therefore violate her easement right. As a matter of law, the existence of Ms. Hill's drainage easement precludes this development, and there is no evidence in the record that the applicant has useable access to Parcel 2. For that reason, this application must be denied for lack

Reeve Kearns P.C.

May 1, 2019

Page 3

of legal access required by SHMC 17.84.070 to serve Parcel 2. A copy of Ms. Hill's recorded easement and illustration of its location on the subject property are attached as Exhibits to this Appeal Notice.

The subject property is served by a long, substandard road that does not meet the City's basic requirements for access. In particular, Belton Road/Gray Cliffs Road collectively constitute an over-length dead-end or cul-de-sac. While the roadway is within a 50-foot public right-of-way, the pavement width varies from 17 feet wide near the Elks Lodge and quickly narrows to 11 feet for most of its length. SHMC 17.84.070, Figure 15 requires a minimum access width of 24-30 feet with a minimum pavement width of 20 feet when serving 3-6 homes, thus an 11-foot pavement width is inadequate. Approval of a new buildable parcel on this road not only endangers public health and safety, it violates the City's minimum access requirements in SHMC 17.84.070 and must be denied. The Administrator's suggested mitigation of a single turn-out near the blind curve on Belton Road does not remedy the life safety hazard, nor does it satisfy the Code's requirements. Unless this application proposes to comply with the 20-foot pavement width requirement in SHMC 17.84.070, it must be denied.

V. **Appeal Fee:** Payment of the \$250 appeal fee accompanies this Notice of Appeal.

Please notify me when the Planning Commission hearing is scheduled. Thank you.

Sincerely,



Daniel Kearns

Enclosures

cc: Client  
Agnes Marie Petersen, Esq.



BIG DRAFT FIELD EASEMENT

## EASEMENT AGREEMENT

BOOK 208 PAGE 404

THIS AGREEMENT, made this 27th day of July, 1976, by and between CHARLES T. BROWNLOW, grantor, and LEE C. APPLGATE, grantee;

WHEREAS, grantee is the owner of the following described real property in Columbia County, Oregon, to-wit:

Beginning at a point which is North 4°35'30" West 1223.3 feet and East 1891.3 feet from the Northeast corner of "Rose Hill", Columbia County, Oregon, said point being on the left bank of the Columbia River; thence along low water line along said left bank North 31°38' West a distance of 266.37 feet; thence South 69°24' West a distance of 227.37 feet; thence North 24°36'30" West to a point on the most Easterly North line of City Ordinance #1877 recorded August 18, 1969 in Book 174, page 343, Deed Records of Columbia County, Oregon; thence South 60°21' West 153.57 feet; thence South 57°16' West 46.43 feet to the TRUE POINT OF BEGINNING of herein described tract, said point being the Northwest corner of tract described in Deed Book recorded March 30, 1976 in Book 137, page 11, Mortgage Records of Columbia County, Oregon; thence South 64°47'30" West 81.22 feet; thence South 64°47'30" West 75.10 feet; thence South 46°33' West 87.50 feet; thence South 34°02' East to the North line of 50 foot road conveyed to City of St. Helens by deed recorded October 12, 1971 in Deed Book 184, page 11; thence North 69°24' East along the North line of said 50 foot road to the point of intersection with the West line of tract described in Mortgage Book 137, page 12; thence North 24°36'30" West along said West line to the point of beginning.

The grantors, in consideration of ONE DOLLAR (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, do hereby grant and convey to the grantees, their heirs, successors and assigns, a non-exclusive easement, subject to liens and encumbrances of record, in the following described real property in Columbia County, Oregon, to-wit:

That part of the following described tract lying Northerly of the Easterly extension of the North line of Sixth Street as conveyed to City of St. Helens by deed recorded October 12, 1971 in Deed Book 184, page 11:

BOOK 208 PAGE 405

Beginning at a point which is North 4°35'30" West 1223.3 feet and East 1891.3 feet from the Northeast corner of Rose Hill, Columbia County, Oregon, said point being on the left bank of the Columbia River; thence along low water line along said left bank North 31°38' West a distance of 266.87 feet; thence South 69°24' West a distance of 227.37 feet to the TRUE POINT OF BEGINNING; thence North 24°36'30" West to a point on the most Easterly North line of City Ordinance #1877 recorded August 18, 1969 in Book 174, page 343, Deed Records of Columbia County, Oregon; thence South 60°21' West 153.57 feet; thence South 57°16' West 46.43 feet; thence South 24°36'30" East 251.73 feet; thence South 16°02' East 6.3 feet; thence North 69°24' East 200 feet to the point of beginning, EXCEPT THEREFROM that portion lying within 50 foot road conveyed to City of St. Helens by deed recorded October 12, 1971 in Deed Book 184, page 11,

for the construction, maintenance, use and repair of an individual water-carried subsurface sewage disposal system (hereinafter called "system") appurtenant to the above-described property of grantees.

Grantors, for themselves and their heirs, successors and assigns, covenants and agree to and with the grantees, their heirs, successors and assigns, that the above-described property of grantors shall not be used for any purpose detrimental to said system or contrary to laws and rules of governmental agencies applicable or related to said system.

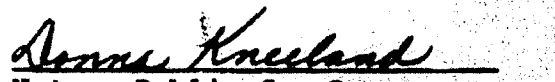
IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first hereinabove written.

  
Charles T. Brownlow (Grantor)

  
Lee C. Applegate (Grantee)

STATE OF OREGON           )  
County of Columbia    ) ss.  
July 27, 1977 )

Personally appeared the above-named Charles T. Brownlow, grantor, and Lee C. Applegate, grantee, and acknowledged the foregoing instrument to be their voluntary act. Before me:

  
Notary Public for Oregon  
My commission expires: 9-14-77

APPROVED:

  
Sanitarian

Date July 28, 1976

204 208

BOOK 208 PAGE 406

7312  
STATE OF OREGON  
COLUMBIA COUNTY  
RECORDED OR FILED  
OCT 13 3 16 PM '76  
BOOK 208 PAGE 404  
ROY A. NELSON CO CLK  
Dep. Sec. Nelson DEP.

Lee Applegate  
P.O. Box 1  
St. Helens, Or.



EASEMENT AREA  
PER ROCK 708, PAGE 404

**Notes:**

Property Owners:  
Andrew and Lindsay  
Schlumpberger  
160 Belton Road  
St. Helens, OR 97051

Tax Map Parcel No.:  
5134-000-00201  
5134-BC-01100

Zoning: R10

Wetland Delineation by  
Wetland Solutions Northwest, LLC

Sensitive Lands Buffers were  
measured along the slope

Dalton Lake  
EDGE OF WATER

**Parcel 2**

48060 SQ.FT.  
22565 SQ.FT. OUTSIDE  
OF SENSITIVE LANDS

**Parcel 1**

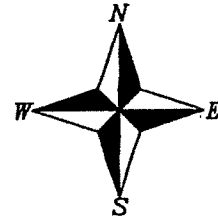
45900 SQ.FT.  
43010 SQ.FT. OUTSIDE  
OF SENSITIVE LANDS

HOUSE

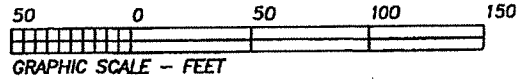
GARAGE

Belton Road

Columbia River



Scale: 1"=50'  
CF&SF: 18054S



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

DAVID E. REYNOLDS  
JULY 28, 1985  
2157

RENEWAL DATE: 12-31-2020

Reynolds  
Land Surveying, Inc.  
32990 Stone Road  
Warren, Oregon 97053  
(503) 397-5516

Preliminary Partition Plat  
For  
Andrew & Lindsay Schlumpberger  
Situated In The N.W. 1/4  
Section 34, T.5N., R.1W., W.M.  
City of St. Helens  
Columbia County, Oregon  
January 21, 2020



265 Strand / PO Box 278  
St. Helens, Oregon  
97051

## NOTICE OF ADMINISTRATOR'S LIMITED LAND USE DECISION April 15, 2020

### *Amended Decision*

#### **RE: Partition, PT.1.20**

You are receiving this notice of a decision by the City of St. Helens Planning Administrator because you are entitled to it by law. Andrew and Lindsay Schlumpberger submitted an application to divide or replat property located at 160 Belton Road into two (2) parcels. The site is also known as Columbia County Assessor Map No. 5N1W-34BC-1100 and 5N1W-34-201. The City Planning Administrator is authorized by the City of St. Helens Development Code (SHMC Title 17) to review Land Partition applications and approve, deny or approve them with conditions.

Attached is a complete report of the proposal, which includes the criteria and evaluation to approve or deny the proposal, and the decision.

**This is an amended (revised) decision. You may have received an earlier version of this previously. This decision has been amended by the City based on citizen comments received during the comment period.**

This decision may be appealed if done so within the appeal period. An extension to the normal 10 day appeal period was requested due to the COVID-19 pandemic in the United States. As such, **the appeal period shall extend till May 1, 2020**. The decision becomes effective at 5pm on the last day of the appeal period if no appeal is filed.

The application and details are on file at City Hall and are available for review during normal business hours. Copies are available for a nominal charge.

If you have any questions, please contact this office.

**CITY OF ST. HELENS PLANNING DEPARTMENT  
ADMINISTRATIVE STAFF REPORT**

Item 1.

**\*\*AMENDED DECISION\*\***

**File Number(s):** Partition, PT.1.20

**Proposal:** 2 parcel land partition. A Partition is required when two or three parcels are created within a calendar year. It is also required when a division of land (if not a subdivision, which creates 4 or more lots) creates a street or road. It can also be used to replat or rearrange property lines. This report pertains to the Partition's *Preliminary Plat*; a *Final Plat* is also required subsequent to the *Preliminary Plat*.

**Location:** 160 Belton Road

**Map/Taxlot(s):** 5N1W-34BC-1100 and 5N1W-34-201

**Applicant(s):** Andrew and Lindsay Schlumpberger

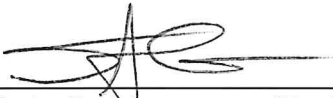
**Owner(s):** same as applicants

**Zoning:** Suburban Residential, R10

\* \* \* \* \*

**CONCLUSION & DECISION**

Based upon the facts and findings herein, the City Planning Administrator **APPROVES** this **Land Partition with conditions** (as detailed in the next section of this report).



Jacob A. Graichen, AICP, City Planner

APRIL 15, 2020  
Date

\* \* \* \* \*

**CONDITIONS OF APPROVAL**

Please note that the requirements of other City of St. Helens departments (e.g., Building, Engineering, and Administration) and other agencies (local, state and/or federal) may apply to this proposal. This *local land use approval* decision does not exempt and is not a substitute for those requirements. *For example, all partitions include necessary steps with Columbia County (e.g., County Surveyor).*

**The following conditions apply to the *local land use approval* aspect of this proposal:**

- 1. This Land Partition preliminary plat approval shall be effective for a period of twelve (12) months from the date of approval.** The approval shall become void if a final plat prepared by a professional registered surveyor in accordance with 1) the approved preliminary plat, 2) the conditions herein, and 3) the form and content requirements of the City of St. Helens Development Code (SHMC Title 17) and Oregon Revised Statutes is not submitted within the twelve (12) month approval period. **Note: a time extension of up to six months is possible per SHMC 17.140.035(3).**



**2. The following shall be required before the City accepts a final plat for review:**

- a. Tree inventory of all trees currently over 12" DBH shall be required. See Chapter 17.132 SHMC. This shall include a protection program defining standards and methods that will be used by the applicant/owner to protect trees during and after construction.

Trees removed within a one-year period shall be inventoried, but identified as being removed for the purpose of tree replacement calculations. The width of the tree (normally measured as diameter of breast height) shall be determined by the width of stump (if below dbh) unless a certified arborist can determine otherwise.

Tree plans are required to be done by a certified arborist or other capable professional as allowed by the planning director.

- b. Easement recorded in 1976 as Book 208, Page 404 Columbia County Clerk's records shall be lawfully abandoned. It shall be removed from the deed of the subject property.

Or, easements can be attained on neighboring properties to circumvent the drain field easement. This option is valid only if the width of the easement is sufficient for the anticipated dwelling units/uses served per the City's standards and includes maintenance agreement provisions that includes the subject property.

- c. Plans for a vehicle turnout (providing a minimum total driveway width of 24 feet for a distance of at least 30 feet) along Belton Road (and within the right-of-way) along the subject property shall be provided for city review and approval. The City may require no-parking identification.

Location of turnout shall remedy the blind corner to the maximum extent possible where the public right-of-way has an approximate 90 degree angle along the west side of the subject property.

**3. The following shall be required before the City signs an approved final plat:**

- a. The vehicle turnout per plans per condition 2.c shall be completed and approved by the City.
- b. Applicant shall provide (a) maintenance agreement(s), subject to city review and approval, that will be recorded with the final plat per condition 5.

**4. In addition to compliance with local, county, state and other requirements, the following shall be included on the final plat:**

- a. Conservation easements to the City for wetlands and related upland protection zone, and riparian areas and related upland protection zones. For conservation easements, there shall be a narrative that states: "this area subject to the restrictions and protections of the City of St. Helens" or an alternative as approved by the City.
- b. A note shall be included on the plat for the maintenance agreement for shared access (see condition 3.b and 5) with a line to write the instrument number on the plat upon the agreement's recordation.
- c. Any easements and related maintenance agreements for easements outside of the subject property, if the applicant pursues such for access to Parcel 2 or otherwise.
- d. Easement serving Parcel 2 via Belton Road shall be a minimum of 30' wide for its entire length.

**5. The following shall be recorded with the final plat:**

- a. Maintenance agreements shall be required for all access easements.
- b. Any access easement that may apply.

**6. The following shall be required prior to any development or building permit issuance for Parcel 2 of this partition:**

- a. Fire Marshall approval of driveway design shall be required and the plans included as part of the building/development permit.
- b. Plans as part of the building/development permit shall show minimum 10' paved driveway width (or additional requirements per the Fire Marshall) from Belton Road to the dwelling or other principal use proposed. This must be within the easement(s) for Parcel 2. *Note the photo and discussion on page 10 of this report.*

Driveway shall include any turn-around/maneuvering areas required by the Fire Marshall.

*Paving requirements are not exempt if easement is on another property.*

**7. The following shall be required prior to Certificate of Occupancy (or the equivalent) of new principal uses for each parcel of this partition:**

- a. Tree replacement as necessary per the requirements and plans per the conditions herein.
- b. Installation driveway per the requirements and plans per the conditions herein.

**8. Any requirement of the Fire Marshall as it applies to this Land Partition shall be met.**

**9. All utilities shall be underground pursuant to SHMC 17.152.120.**

**10. Tree replacement shall be required when future development occurs, as applicable per Chapter 17.132 SHMC. Development shall follow the approved protection program defining standards and methods that will be used by the applicant/owner to protect trees during and after construction. City recommends that trees be replanted in the general area they were removed for neighborly courtesy.**

**11. This partition does not allow impacts to sensitives lands (such as floodplains, wetlands and their upland protection zones, and riparian areas and their upland protection zones). Additional permitting may be required for such impacts. Sensitive lands regulation still apply.**

**12. Storm water regulations still apply.**

**13. Owner/applicant is still responsible to comply with the City Development Code (SHMC Title 17).**

\* \* \* \* \*



**Site Description:** The property to be divided is developed with a detached single-family dwelling. The property abuts both Dalton Lake and the Columbia River. It is accessed via Belton Road

**Permitting History:** Per the County Assessor, the dwelling on the property was built in 1976. There was an application to divide the subject property (in its configuration at the time) in 1993; that was never completed. A Lot Line Adjustment was approved and completed in 2004 between the subject property and an adjacent property on the east side. This resulted in the property's "pan handle" extending to the Columbia River; prior to this Lot Line Adjustment, the subject property did not front the Columbia River. The property is now proposed to be partitioned into two parcels.

**SHMC 17.140.040 – Partition approval criteria.**

A request to partition land shall meet all of the following criteria (1-5):

**(1)** The proposal conforms with the city's comprehensive plan;

**Finding(s):** There is no known conflict with the specific Comprehensive Plan policies identified in Chapter 19.12 SHMC.

There is no known conflict with the addendums to the Comprehensive Plan which includes Economic Opportunities Analysis (Ord. No. 3101), Waterfront Prioritization Plan (Ord. No. 3148), the Transportation Systems Plan (Ord. No. 3150), the Corridor Master Plan (Ord. No. 3181), the Parks & Trails Master Plan (Ord. No. 3191), the Riverfront Connector Plan (Ord. No. 3241), and the Housing Needs Analysis (Ord. No. 3244).

**(2)** The proposed partition complies with all statutory and ordinance requirements and regulations;

**Finding(s):** New lines do not create any new substandard compliance with the R10 zone.

There is area of special flood hazard (100 year flood) associated with the Columbia River. Its possible that any development of Parcel 2 can avoid this. Further consideration when Parcel 2 is developed. City may require elevation data to ensure any development is outside of the floodplain.

There is considerable nonnative blackberry growth within the protection zones of both the Columbia River and Dalton Lake. Removal of invasive species does not require a permit if done by electric or handheld (non-power assisted) equipment per SHMC 17.40.035(1)(c). If power assisted equipment or machinery is used a permit is required. See SHMC 17.40.040(6)(d). See Chapter 17.40 for further details.

Per SHMC 17.132.025 a tree plan is required. Most trees can probably be saved, but some are proposed to be removal eventually for driveway and utility service to Parcel 2. Trees within protection zones are already protected per Chapter 17.40 SHMC. A tree plan meeting the standards of this Chapter has not been provided. Tree inventory of all trees currently over 12" DBH shall be required. Replacement shall be required when future development occurs, as applicable.

[Letter from VanNatta, Petersen and Anderson, Attorneys at Law dated April 7, 2020 mentions concern about trees. It requests that trees be replanted in the general area they were removed. There is no specific code provision for this, but it can be a suggested condition. However, a protection program defining standards and methods that will be used by the applicant to protect trees during and after construction is a code requirement.](#)



In addition, after the initial decision was issued (before this amended decision) the applicant started to remove trees. New stumps were observed. Tree removed within 1 year of the land partition application count towards the tree plan requirement. Normally, the 12" wide is dbh, but as the applicant felt it necessary to start removing trees early, the 12" measurement will need to be made at the stump level, unless a certified arborist can determine otherwise. Trees removed recently need to be identified as such on the tree preservation plan and will count for replacement calculations.

Tree plans are required to be done by a certified arborist or other capable professional as allowed by the planning director. Tree plan includes protection of trees.

Utilities are already underground in this area. This is required.

Letter from Tracey A. Hill dated April 6, 2020 argues that the proposal includes a flag lot. Proposed Parcel 2's access is via easement, which can be allowed in some circumstances. Thus, it is not a flag lot, which are not allowed in the R10 zoning district.

**(3)** Adequate public facilities are available to serve the proposal (to address transportation facilities in this regard, a traffic impact analysis shall be prepared, as applicable, pursuant to Chapter 17.156 SHMC);

**Finding(s): Water** is available. There is a water main within the Belton Road right-of-way along the west side of the subject property and along the south side of the property. For the purpose of this Partition, whether or not Parcel 2 will have access to the southerly water main is unknown, but it is at least available from the Belton Road right-of-way to Parcel 2 via proposed easements as shown on the preliminary plat.

**Sanitary sewer** is available. When 160 Belton Road was originally built in 1976 it was connected to an on-site septic system with holding tank and drain field. Around the late 1980s with further improvements in the early 1990s a septic tank effluent pump (STEP) system was installed. This is a pressurized sanitary sewer system with limited capacity. Development off Belton Road (and the connected leg of Grey Cliffs Drive) is dependent on this STEP system or on-site (septic systems) facilities.

Sometime after the STEP system was installed, the subject property is assumed to have connected; it currently gets billed for both water and sanitary sewer. Moreover, past Columbia County permits show that the drain field for the on-site (septic system) was shared with 250 Belton Road (adjacent property to the west). 250 Belton Road also currently gets a water and sewer bill; thus, is assumed to have connected to the STEP system.

The applicant provided an analysis of the STEP system by a Oregon Registered Professional Engineer, that notes that the STEP system has eight connections and there is the potential capacity for more. Proposed Parcel 1 is already served and Parcel 2 has the ability to be served.

**Storm Water.** Both the Columbia River and Dalton Lake are nearby. Letter from VaNatta, Petersen & Anderson, Attorneys At Law, dated April 7, 2020 expressed concerns about storm water. That letter requests several conditions as it pertains to storm water. The city recognizes these concerns as germane to physical work on the property. However, the city's storm water provisions would apply regardless of the land division. The City can add a condition to that affect.

The **street system** for this area is problematic. There are currently about ten homes accessed by a single narrow road (Belton Road / Grey Cliffs Drive) with no outlet, starting from the driveway to the Elks Lodge at 350 Belton Road and proceeding easterly to road terminus. The first approximate 500 feet of this section of road is paved at a width of approximately 17 feet, thereafter the width is around 11' in most places. This doesn't meet any current standard for a public or private street that accesses 10+ dwellings.



The street is paved where it lies within public right-of-way, but turns to gravel when it leaves the right-of-way along the south side of the subject property. Paving is required in residential areas per current standards.

A new parcel that will allow another dwelling doesn't warrant improvement of the entire street system but this issue is important as the road is narrow making it difficult for two opposing automobiles to pass and for emergency vehicle access/maneuvering/turn around. Conditions for the street system are detailed further below.

The street system provides **access**. Access to a proposed parcel is a critical element. There is an easement on the property that lies between the Belton Road right-of-way and proposed Parcel 2. It also substantially encumbers access to Parcel 2 from the south side.

This easement was recorded in 1976 as Book 208, Page 404 Columbia County Clerk's records and is for:

"the construction, maintenance, use and repair of an individual water-carried subsurface sewage disposal system"

It appears to be for the benefit of property addressed as 250 Belton Road. As described above, both the subject property and 250 Belton Road appear to be connected to the STEP system. Despite this, the easement remains. Even though the easement may not have been used in many years, it may not be legally abandoned. Oregon law requires more than nonuse to prove abandonment. Some related case law:

In *Wiser v. Elliott*, 228 Or. App. 489, 495, 209 P.3d 337, 341 (2009), the Oregon Court of Appeals stated:

"We have since held that nonuse of an easement is insufficient by itself to prove abandonment. In *Conner v. Lucas*, 141 Or. App. 531, 538, 920 P.2d 171 (1996), we reiterated that,..."

"[i]n *Abbott v. Thompson*, 56 Or. App. 311, 641 P.2d 652, rev. den. 293 Or. 103, 648 P.2d 851 (1982), we explained that nonuse alone does not constitute the abandonment of an easement. A party claiming abandonment must show in addition to nonuse 'either [a] verbal expression of an intent to abandon or conduct inconsistent with an intention to make further use.' *Id.* at 316, 641 P.2d 652."

It is not the City's decision to determine as to whether the easement is abandoned. However, it exists on deed records and is a substantial encumbrance to access proposed Parcel 2. As such, this easement must be eliminated prior to final platting, [or per below](#).

[Letter from Tracey A. Hill dated April 6, 2020 argues the easement is a basis for denial. It does create access concerns, especially since, per Columbia County, underground utilities are required to be 10' from drain fields and driveways are not allowed over drain fields. This letter further states no willingness to abandon the easement. It is possible that the applicant attain easements on neighboring properties to circumvent the drain field easement. If such option is taken, the easement must be in place before the final plat, to be referenced on the final plat, and will only be considered if the easement is the right width for the anticipated number of dwelling units \(or other uses\) to be served and includes maintenance agreement provisions.](#)

[Further, the paving requirements for driveways/streets are not exempted by being on another property.](#)

**(4)** All proposed lots conform to the size and dimensional requirements of this code; and

**Finding(s):** There are two aspects of this criterion, Sensitive Lands and the provisions of the R10 zoning district.

**Sensitive Lands.** The site abuts the Columbia River (with 75' upland protection zone required per Chapter 17.40 SHMC) and Wetland D-16, otherwise known as Dalton Lake (with 75' upland protection zone required per Chapter 17.40 SHMC). The applicant has conducted an Environmental Assessment to determine the boundaries of these sensitive lands and their respective buffers, which are reflected on the preliminary plat.

The City's local wetland inventory also identified Wetland D-17 on or close to the property, but the Environmental Assessment effort determined D-17 was not close to the property and does not impact this partition.

Letter from VaNatta, Petersen & Anderson, Attorneys At Law, dated April 7, 2020 requests that no development occur within sensitive lands. The City's (and other agencies such as the State of Oregon Division of State Lands and US Army Corps of Engineers) rules pertaining to sensitive lands apply regardless of this partition or not. The City can add a condition to that affect.

For subdivisions (creating 4 or more lots), significant wetlands and riparian areas and their protection zones are required to be part of dedicated preservation tracts to be managed by a homeowners association or other responsible entity. Partitions do not create tracts. Thus, the City has allowed easements as a substitute to preserve these areas (e.g., see P.P. No. 2009-17). However, the intent of this is for newly created properties to be "whole" excluding the sensitive lands and protection zones. "Whole" means that the net property not encumbered needs to meet the standards of the Development Code.

Thus, the **R10 zoning district** standards. The minimum lot size of is 10,000 square feet. The net area excluding the wetland, riparian area and protection zones still exceeds this for both parcels. The minimum lot width at the building line is 70' or 80' for a corner lot. Parcel 1 is a corner lot and exceeds this. Parcel 2 gets close to 70' in its net area, but still meets the standard.

The minimum lot width at the street is 60' or 30' along an approved cul-de-sac (i.e., dead-end road). Parcel 1 meets this and Parcel 2 meets the cul-de-sac standard given a proposed 40' wide access and utility easement.

Letter from VaNatta, Petersen & Anderson, Attorneys At Law, dated April 7, 2020 noted that the easement proposed to serve Parcel 2 starts out at 20' in width and widens to 40', which brings the cul-de-sac street width standards to question. Minimum width shall be at least 30 feet. This puts the easement line within about 17' of the existing garage. Staff can allow a slight reduction to the 20' setback (or yard) (measured from the easement line) per SHMC 17.108.080(1). Its only a corner that is within the 20' yard.

Minimum lot depth is 100 feet. This is met for both parcels using the net area.

**(5)** All proposed improvements meet city and applicable agency standards.

**Finding(s):** This will be a requirement. Fire Marshall consideration is particularly important given limited access to the area.

\* \* \*

#### **SHMC 17.140.050 – Special provisions for parcels created by through the partition process.**

**(1)** Lot Dimensions. Lot size, width, shape and orientation shall be appropriate for the location of the development and for the type of use contemplated, and:

- (a) No lot shall be dimensioned to contain part of an existing or proposed public right-of-way;
- (b) The depth of all lots shall not exceed two and one-half times the average width, unless the parcel is less than one and one-half times the minimum lot size of the applicable zoning district; and



(c) Depth and width of properties zoned for commercial and industrial purposes shall be adequate to provide the off-street parking and service facilities required by the type of use proposed.

**Finding(s):** (a) No existing or proposed right-of-way is impacted. (b) Excluding sensitive land protection buffers the net area for Parcel 2 has an average width of approximately 90' and a depth of approximately 230'. This meets the depth to width ratio requirement more-or-less. (c) Not applicable; the property is zoned residential.

**(2) Through Lots.** Through lots shall be avoided except where they are essential to provide separation of residential development from major traffic arterials or to overcome specific disadvantages of topography and orientation, and:

- (a) A planting buffer at least 10 feet wide is required abutting the arterial rights-of-way; and
- (b) All through lots shall provide the required front yard setback on each street.

**Finding(s):** No through lot is proposed.

**(3) Large Lots.** In dividing tracts into large lots or parcels which at some future time are likely to be redivided, the approving authority may require that the lots be of such size and shape, and be so divided into building sites, and contain such site restrictions as will provide for the extension and opening of streets at intervals which will permit a subsequent division of any tract into lots or parcels of smaller size, and:

(a) The land division shall be denied if the proposed large development lot does not provide for the future division of the lots and future extension of public facilities.

**Finding(s):** Given surrounding wetlands, the Columbia River, floodplain associated with the Columbia River, one narrow road access for this neighborhood, this neighborhood's wildland-urban interface (a transition area between wildland and human development with a higher wildfire risk), and limited sanitary sewer capacity, density promotion is unwise in this area. Redevelopment planning such as "shadow plats" are not warranted for this proposal.

**(4) Fire Protection.** The fire district may require the installation of a fire hydrant where the length of an accessway would have a detrimental effect on firefighting capabilities.

**Finding(s):** There is an existing fire hydrant along Belton Road by the southern edge of the subject property.

The access easement proposed to serve Parcel 2 will exceed 150 feet. Per SHMC 17.152.030(3)(a), when access easements exceed 150 feet, they shall be improved in accordance with the fire code. When Parcel 2 is developed, its driveway will need to be able to accommodate emergency vehicles. Any requirement of the Fire Marshall shall be met.

**(5) Reciprocal Easements.** Where a common drive is to be provided to serve more than one lot, a reciprocal easement which will ensure access and maintenance rights shall be recorded with the approved partition map.

**Finding(s):** An access easement is proposed to access Parcel 2 from the Belton Road right-of-way through Parcel 1. Maintenance agreement shall be required.

**(6) Accessway.** Any accessway shall comply with the standards set forth in Chapter 17.84 SHMC, Access, Egress, and Circulation.

**Finding(s):** The access easement proposed to provide street connection to proposed Parcel 2 encompasses the southerly 20' of Parcel 1 (where there are previously recorded access and utility easements for other parties) and the west 40' of Parcel 1. **As noted above, a 30' minimum width is required.**

Parcel 2 is likely to be developed as a detached single-family dwelling and though not currently allowed, potentially a duplex given Oregon HB 2001, which requires St. Helens to allow duplexes in lands zoned for single-family dwellings by June 30, 2021. The minimum easement for up to two dwellings (like a duplex) is 15' width with a minimum 10' pavement width.

The other issue is the other properties that use the first leg of the proposed easement. The following detached single-family dwellings/properties access this area from Belton Road:

1. 140 Belton Road; 5N1W-34-200
2. 585 Grey Cliffs Drive; 5N1W-34BC-901
3. 5N1W-34BC-900 (this Land Partition decision is not the mechanism to determine if this is a legal lot of record).
4. 575 Grey Cliffs Drive; 5N1W-34BC-1301

Thus, there are three detached single-family dwelling that use the access. With the new Parcel 2, it would be four. The minimum easement for 3-6 dwelling units is 24' (not bearing on this application) with a pavement width of 20 feet.

In addition, the following requirements apply under SHMC 17.84.070:

- (2) Private residential access drives shall be provided and maintained in accordance with the provisions of the Uniform Fire Code.
- (3) Access drives in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus in accordance with the engineering standards of SHMC Title [18](#) and/or as approved by the fire marshal.
- (4) Vehicle turnouts (providing a minimum total driveway width of 24 feet for a distance of at least 30 feet) may be required so as to reduce the need for excessive vehicular backing motions in situations where two vehicles traveling in opposite directions meet on driveways in excess of 200 feet in length.

New access to Parcel 2 will be subject to Fire Marshall/Fire Code standards. This includes a turn-around area.

New access to Parcel 2 shall be paved as required by the Development Code.

Given the basic provisions above and general guidance for improvements, the specific road improvements necessary for this partition because it will result in increased density on an already substandard street network are:

#### **Easement (private road) along the south side of the property.**

When Parcel 2 is developed, it will need a minimum 10' wide paved driveway from Belton Road to the dwelling or other principal use proposed. This must be within the easement on Parcel 1 for Parcel 2 (cannot be on adjacent property). This is important to consider as the private road along the south side of the subject property is mostly outside of the property where it intersects Belton Road, but angles into the property progressing eastward.

This will result in a total roadway width widening at least close to Belton Road. *Or since the easement will be 30 in width off of the Belton Road right-of-way, may appear to be separate driveway off Belton. This is ok as there is no minimum spacing for driveways along local classified streets (Chapter 17.84 SHMC).*





**Photo left:** The intersection of the Belton Road (public right-of-way) and the private road along the south side of the subject property. Photo looking east.

The black arrow identifies the southwest property corner. The yellow arrow indicates approximately 11 feet from that property corner.

The new driveway serving parcel 2 needs to be within the easement provided for it. It will need to be to the left of the black arrow at this location.

The existing private road angles northerly into the property as can be seen in the distance here.

### Belton Road.

Belton Road is substandard as to width, but the right-of-way is 50' in width. 50' is the standard right-of-way width for local classified streets. Belton is a local classified street. The right-of-way meets standards, the physical improvements do not.

The partitioning of the property will result in increased vehicular trips for the permanent improvements and construction leading to those improvements. The property abuts locations along the right-of-way that could reasonably be improved to achieve the 24' x 30' turnout area described above. Because (1) this will abut the "developed" Parcel 1, which could have different ownership than Parcel 2 (once partitioned), and (2) this partition is the catalyst for new/additional vehicular trips for Belton Road, these improvement shall be done prior to the final plat, subject to City review and approval. Location should be such to maximize the view a motorists to see oncoming traffic to use the vehicular turnout area. No parking identification may be necessary.

**Letter from Robin Nunn, dated April 8, 2020 attests to this concern. The approximate 90 degree angle of the Belton Road right-of-way is an area of concern being a blind corner. The turnout should remedy this to the maximum extent possible.**

**(7)** The streets and roads are laid out so as to conform to the plats of subdivisions and maps of partitions already approved for adjoining property as to width, general direction and in all other respects unless the city determines it is in the public interest to modify the street or road pattern.

**Finding(s):** There is no reason to modify the overall road pattern. Some improvement for function and safety is warranted when parcel 2 is developed.

\* \* \* \* \*



**ATTACHMENTS**

- Preliminary plat
- Engineering report from Schlumberger Consulting Engineers, Inc. dated December 13, 2019 regarding STEP system
- Preliminary plat showing easement recorded in 1976 as Book 208, Page 404 Columbia County Clerk's records
- Environmental Assessment from Wetland Solutions Northwest, LLC dated January 30, 2020
- [Letter from Tracey A. Hill dated April 6, 2020](#)
- [Letter from VaNatta, Petersen & Anderson, Attorneys At Law, dated April 7, 2020](#)
- [Letter from Robin Nunn, dated April 8, 2020](#)

Notes:

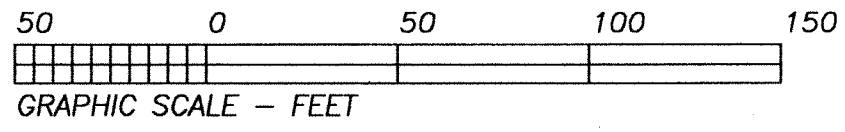
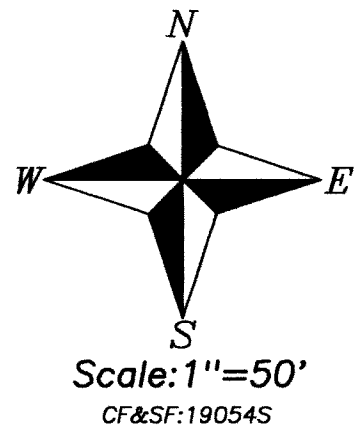
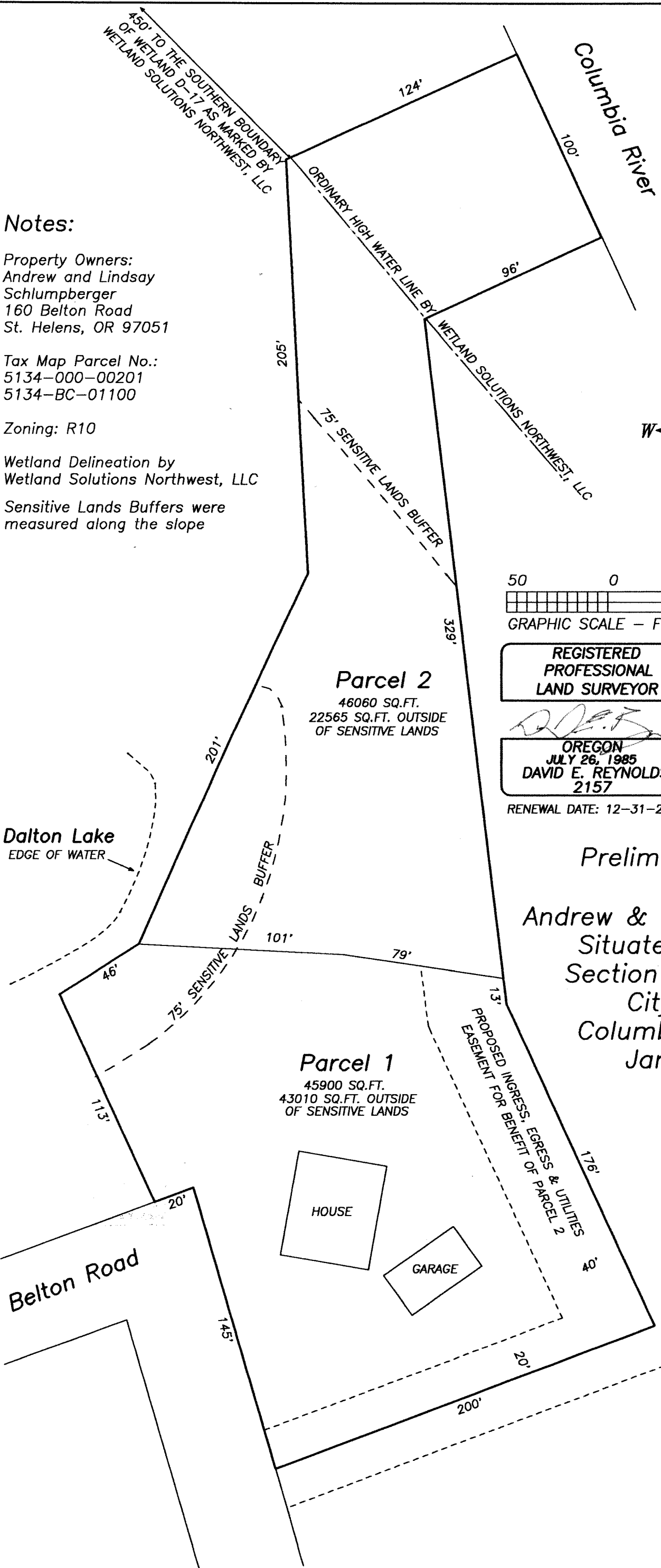
Property Owners:  
Andrew and Lindsay  
Schlumpberger  
160 Belton Road  
St. Helens, OR 97051

Tax Map Parcel No.:  
5134-000-00201  
5134-BC-01100

Zoning: R10

Wetland Delineation by  
Wetland Solutions Northwest, LLC

Sensitive Lands Buffers were  
measured along the slope



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JULY 26, 1985  
DAVID E. REYNOLDS  
2157

RENEWAL DATE: 12-31-2020

Reynolds  
Land Surveying, Inc.  
32990 Stone Road  
Warren, Oregon 97053  
(503) 397-5516

Preliminary Partition Plat  
For  
Andrew & Lindsay Schlumpberger  
Situated In The N.W. 1/4  
Section 34, T.5N., R.1W., W.M.  
City of St. Helens  
Columbia County, Oregon  
January 21, 2020



**Schlumpberger Consulting Engineers, Inc.**  
 Structural/Civil /Environmental/Construction Mgt.

*Main Office: Mount Shasta*  
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 Tel: 530-926-2605  
 Oregon: 17744 #A11 Hwy 101 N. Brookings, OR 97415  
 Mobile: 530-859-1277  
 Email: cps@sceshasta.com

**SUBJECT: Additional Connections to the Belton Road S.T.E.P. System**  
**In St. Helens, Oregon**

**CLIENT: Andrew Schlumpberger**  
**LOCATION: 160 Belton Road**  
**St. Helens, Oregon**

**DATE: December 13, 2019**

**Engineering Report:**

1. The existing STEP wastewater system for the Belton Road and Graycliff Drive in St. Helens, Oregon as shown on the as-built plan dated August 1989 by Smits and Associates, with updates in 1990 and 1992, is a pressure system for the community of Forest Park Road.
2. The Step system requires a pump at each lot that is hooking up to the system.
3. The transport pipe is in City ROW and is maintained as part of the City wastewater collection system.
4. The transport pipe is 2 inch schedule 40 PVC pressure pipe. The transport pipe can take a maximum flow of 127 gallons per minute (gpm) at minimal internal pressure of 20-100 psi.
5. The total length of the transport pipe is less than 1500 feet. Connections are at multiple points along this transport pipe and available to all lots along Belton and Graycliff roads that can connect to the transport pipe.

In reviewing the as-built plans it appears that the existing transport pipe, with 8 current connections, is capable of a number of future connections without significant problems to City STEP System or existing owners since each new owner would have a tank, pump and lateral for which they are responsible for. There are less than ten connections to the pressure line at this time and the two inch line has capacity for more than ten connections at peak capacity where everyone is pumping at the same time. High Head pumps are needed for the static and dynamic TDH losses. Pumps should be efficient between 10 and 30 gpm. Even if all pumps are on at once there is capacity for a minimum of 12 connections or maximum of 20. Pumps should be effluent pumps rather than grinder pumps and TDH capacity of 150 feet and discharge rate of 20 gpm. Therefore there should be no issues with an additional connection to the Belton Road S.T.E.P. System with an approved tank and pump.

Charles Schlumpberger PE  
 C15654



LUBA Page 239  
 EXPIRES 6/30/20



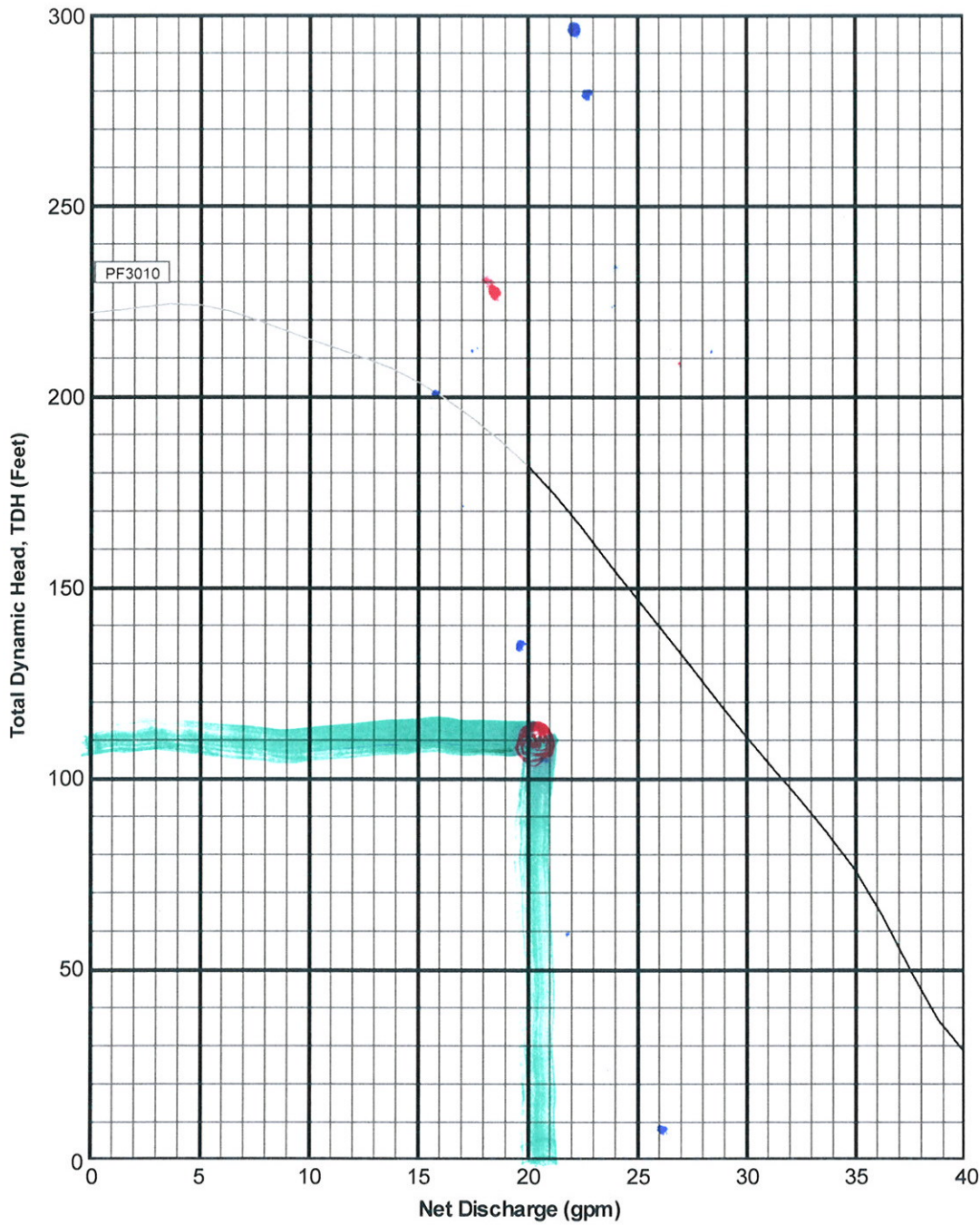
**Pump Curve**  
for PF3010



**Oreco Systems®**  
Incorporated

*Changing the Way the  
World Does Wastewater®*

Item 1.



Recommended Pump for S.T.E.P.  
Oreco PF3010 High Head



# Belton Road S.T.E.P. System

Belton Road and Graycliff Drive.

## Legend

 Elks Lodge





EASEMENT AREA  
PER BOOK 708, PAGE 404

**Notes:**

Property Owners:  
Andrew and Lindsay  
Schlumpberger  
160 Belton Road  
St. Helens, OR 97051

Tax Map Parcel No.:  
5134-000-00201  
5134-BC-01100

Zoning: R10

Wetland Delineation by  
Wetland Solutions Northwest, LLC

Sensitive Lands Buffers were  
measured along the slope

Dalton Lake  
EDGE OF WATER

**Parcel 2**

46060 SQ.FT.  
22565 SQ.FT. OUTSIDE  
OF SENSITIVE LANDS

**Parcel 1**

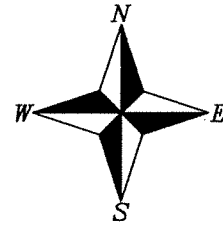
45900 SQ.FT.  
43010 SQ.FT. OUTSIDE  
OF SENSITIVE LANDS

HOUSE

GARAGE

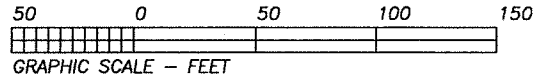
Belton Road

Columbia River



Scale: 1"=50'

CF&SF:19054S



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

OREGON  
JULY 26, 1985  
DAVID E. REYNOLDS  
2157

RENEWAL DATE: 12-31-2020

Reynolds  
Land Surveying, Inc.  
32990 Stone Road  
Warren, Oregon 97053  
(503) 397-5516

Preliminary Partition Plat  
For  
Andrew & Lindsay Schlumpberger  
Situated In The N.W. 1/4  
Section 34, T.5N., R.1W., W.M.  
City of St. Helens  
Columbia County, Oregon  
January 21, 2020



RECEIVED  
JAN 30 2020  
CITY OF ST. HELENS

**Wetland Solutions Northwest, LLC**  
59446 Lytle Dr.  
St. Helens, Oregon 97051  
Stacy@WetlandSolutionsNW.com  
503-367-7177

January 30, 2020

Andrew Schlumpberger  
160 Belton Road  
St. Helens, OR 97051

SUBJECT: 160 Belton Road, St. Helens Wetland/Waters Delineation  
Tax Map / Lots 5013400 / 200 & 50134BC / 1100

### Introduction and Background Information

A lot partition is proposed on the subject site. The subject site includes tax lot 200, located at 160 Belton Road which contains an existing residence, and tax lot 1100 which is undeveloped and extends north of tax lot 200 to the Columbia River. Three wetlands/waters are mapped on or in close proximity to the subject site in the City of St. Helens Local Wetland Inventory (LWI) (Otak, Inc. 1999). Dalton Lake (LWI unit D-16) is mapped adjacent to the northwest portion of tax lot 200, the Columbia River is mapped along the north edge of tax lot 1100, and wetland unit D-17 is mapped extending south of the Columbia River into tax lot 1100. Wetland units D-16 and D-17 are considered Type I significant wetlands, and the City requires a 75-foot protection zone adjacent to Type I significant wetlands. A 75-foot protection zone is also required adjacent to the top of bank of the Columbia River. The tax lot boundaries of the subject site and the LWI mapping are shown on Figure 1 which was obtained from Columbia County Web Maps (Columbia County 2020). A wetland/waters delineation was conducted on the site in order to map the actual location of on and off-site resources and the adjacent 75-foot protection zones to facilitate site planning.

### Methods & Results

A wetland/waters delineation was conducted on January 9, 2020 by Stacy Benjamin of Wetland Solutions Northwest, LLC in accordance with the methodology of the Corps of Engineers (Corps) Wetlands Delineation Manual (Environmental Laboratory 1987) and the Regional Supplement to the Corps Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0; Corps 2010) used by both the Oregon Department of State Lands and the Corps.

The ordinary high water (OHW) line/top of bank of the Columbia River was delineated based on field indicators including a vegetation line, with predominantly bare sandy soils occurring below the OHW line and a notable increase in grasses and weedy forbs occurring above the OHW line.

The wetland boundary of Dalton Lake is well-defined by steep topography, and the wetland boundary coincided with the edge of ponded water during the January 2020 site visit. The southern portion of the lake boundary is defined by a steep hillslope. The steep hillslope, which comprises the majority of the 75-foot protection zone, is vegetated with native trees and shrubs in the overstory including balsam poplar, red alder (*Alnus rubra*), and beaked hazelnut (*Corylus cornuta*), and mainly invasive species in the understory including Himalayan blackberry (*Rubus armeniacus*) and English ivy (*Hedera helix*). A small amount of native sword fern (*Polystichum munitum*) is also present. An existing narrow dirt footpath (approx. 2 feet wide) is present in the riparian protection zone, and a small amount of the upslope edge of the protection zone falls within the edge of an existing mowed lawn. Slopes adjacent to the east/northeast edge of Dalton Lake are more gradual. A dense thicket of Himalayan blackberry is present along the eastern edge of the lake, and a fringe of mainly native wetland vegetation consisting of red osier (*Cornus alba*), Oregon ash (*Fraxinus latifolia*) and reed canarygrass is present extending around the northeast portion of the lake.

Wetland D-17 was determined not to extend onto tax lot 1100, and the southern edge of wetland D-17 was delineated approximately 450 feet north of tax lot 1100. Wetland D-17 consists of a forested and scrub-shrub wetland vegetation community containing balsam poplar (*Populus balsamifera*) and Pacific willow (*Salix lasiandra*) in the overstory with reed canarygrass (*Phalaris arundinacea*) and tall scouring-rush (*Equisetum hyemale*) in the understory. Hydric soils were observed in the wetland, along with water-stained leaves indicating the presence of wetland hydrology. The south wetland boundary was delineated where the reed canarygrass understory transitioned to a Himalayan blackberry understory, soils became a more sandy texture which did not display hydric soil features, no indicators of wetland hydrology were observed, and site topography began to rise.

The boundary of Dalton Lake and the OHW of the Columbia River were professionally land surveyed by Reynolds Land Surveying, Inc (Figure 2), and the 75-foot protection zones were mapped. Site photographs are attached.

## References

Columbia County. 2020. Columbia County Web Maps. Available at: <http://webmap.co.columbia.or.us/geomoose2/>

Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual. Technical Report Y-87-1. Vicksburg, MS: U.S. Army Engineer Waterways Experiment Station.

Otak, Inc. 1999. Local Wetland Inventory, City of St. Helens, OR. Available at: [http://www.oregon.gov/dsl/WETLAND/Pages/lwi\\_disclaimer\\_agreed.aspx](http://www.oregon.gov/dsl/WETLAND/Pages/lwi_disclaimer_agreed.aspx).

U.S. Army Corps of Engineers. 2010. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0), ed. J.S. Wakeley, R.W. Lichvar, and C.V. Noble. ERDC/EL TR-10-3. Vicksburg, MS: U.S. Army Engineer Research and Development Center.

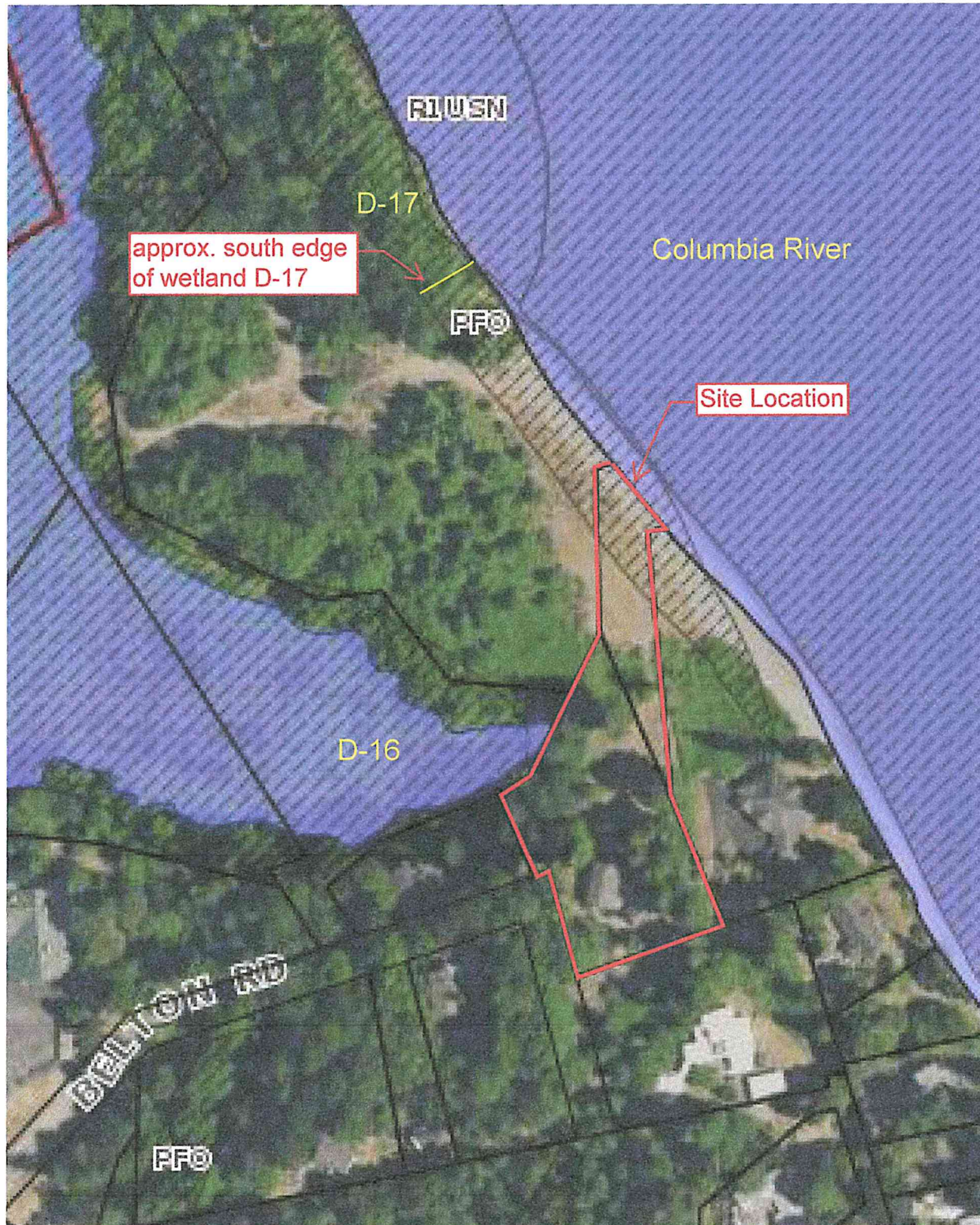
## Attachments

Figure 1. Tax lot map showing LWI mapping

Figure 2. Wetland & waters delineation map

Site photographs





160 Belton Road, St. Helens Wetland & Waters Delineation Figure 1. Site Location Map	↑	Wetland Solutions Northwest, LLC
	Scale approx. 1 inch = 200 ft	
Source: downloaded from: <a href="http://webmap.co.columbia.or.us/geomoose2/">http://webmap.co.columbia.or.us/geomoose2/</a>		January 2020

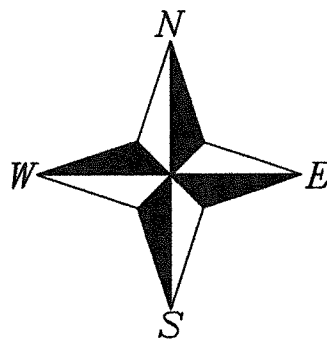
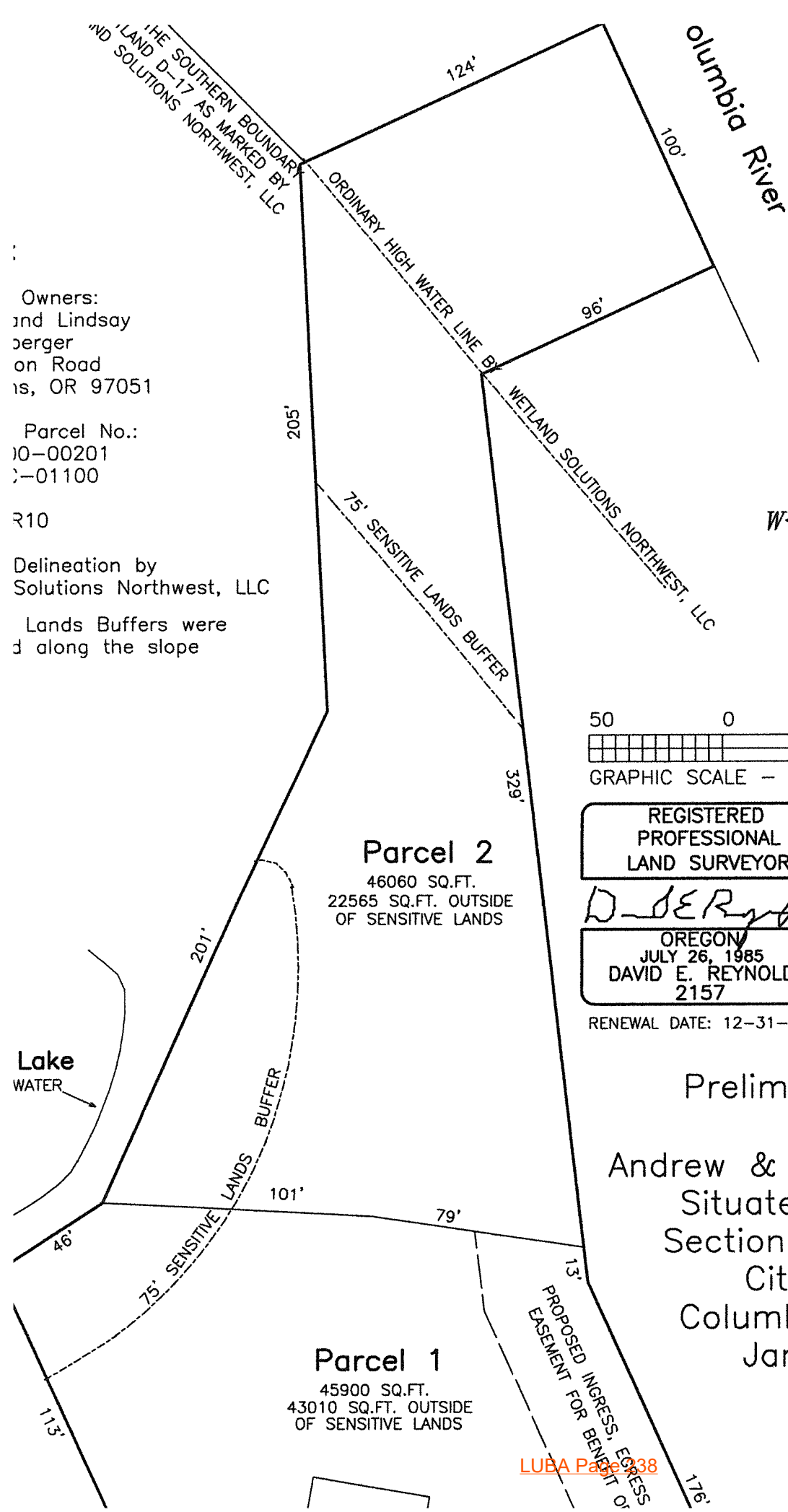
Owners:  
 Andrew & Lindsay  
 Schlumpberger  
 32990 Stone Road  
 Warren, OR 97051

Parcel No.:  
 10-00201  
 10-01100

R10

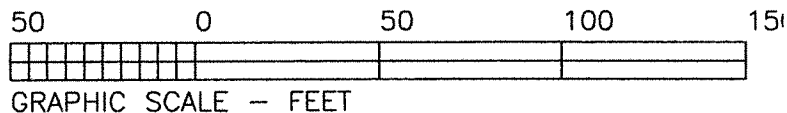
Delineation by  
 Wetland Solutions Northwest, LLC

Lands Buffers were  
 delineated along the slope



Scale: 1"=50'

CF&SF:19054S



REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR

*DERY*

OREGON  
 JULY 26, 1985  
 DAVID E. REYNOLDS  
 2157

RENEWAL DATE: 12-31-2020

Reynolds  
 Land Surveying, Inc.  
 32990 Stone Road  
 Warren, Oregon 97051  
 (503) 397-5516

Preliminary Partition Plat  
 For  
 Andrew & Lindsay Schlumpberger  
 Situated In The N.W. 1/4  
 Section 34, T.5N., R.1W., W.M.  
 City of St. Helens  
 Columbia County, Oregon  
 January 21, 2020





**Photo A.** View east of southern boundary of Dalton Lake and mixed native/invasive community in adjacent 75-foot protection zone.



**Photo B.** View west of invasive Himalayan blackberry community in 75-foot protection zone adjacent to eastern edge of Dalton Lake.





**Photo C.** View north of delineated OHW of Columbia River (red flag).



**Photo D.** View south of delineated OHW of Columbia River (red flag).

Tracey A. Hill  
Tracey A. Hill Family Trust  
250 Belton Road  
St. Helens, OR 97051

April 6, 2020

RECEIVED  
APR 6 2020  
CITY OF ST. HELENS

St. Helens Planning Dept.  
Attn: Jacob Graichen  
P.O. Box 278  
St. Helens, OR 97051

**Re: Comments on Partition, PT.1.20 (Schlumpberger)**

Dear Mr. Graichen:

Please accept these comments on the above-referenced partition application in response to the City's March 25, 2020 Notice. I live on and own property within the notice range of this partition application; in fact, my property is situated adjacent to the parent parcel in this matter. I own a significant septic drainfield easement that encumbers a substantial portion of the parent parcel and is referenced in the Director's draft decision. This July 27, 1976 easement is recorded at Book 208, Page 404 of the property deed records of Columbia County. My comments fall into two categories: legal protections for my recorded easement and the City's land use requirements for partitions.

A. Recorded Easement encumbering the applicant's property. The Director's draft decision suggests that this partition can be preliminarily approved with a condition that the applicant remove this easement prior to final plat approval. I respectfully disagree with this approach. First, my easement is expressly for the following purposes:

"... for the construction, maintenance, use and repair of an individual water-carried subsurface sewage disposal system (hereinafter called 'system') appurtenant to the above-described property of grantees."

"Grantors, for themselves and their heirs, successors and assigns, covenants and agree to and with the grantees, their heirs, successors and assigns, that the above-described property of grantors shall not be used for any purpose detrimental to said system or contrary to laws and rules of governmental agencies applicable or related to said system."

The Director's draft decision suggests that I may consider or may already have abandoned this easement; I have not, nor will I abandon this easement. Even though my property is currently served by a connection to the City's STEP sewer system, this easement provides a valuable property right and guarantee that runs with title to my property that, in the event that the City's STEP system were to fail, be out of service for a period of time, or some other currently unforeseeable event occur, I have a back-up option for septic to serve my home. This was and remains a valuable and important property right, and it was an important consideration when I purchased my property. This easement remains a valuable and important property right today because of the security it provides me and the continued habitability of my



home, regardless of reliability of the City's system. I have not abandoned this easement or my easement rights, and I will not abandon them. Instead, I intend to reconstruct a septic drain field within the easement area and resume its use in the future, if necessary, for its intended purposes. Because it is my intention to resume use of this easement, if needed, and my plan to retain that option in the future, my easement is not and will not be "abandoned" as defined in SHMC 17.16.010.

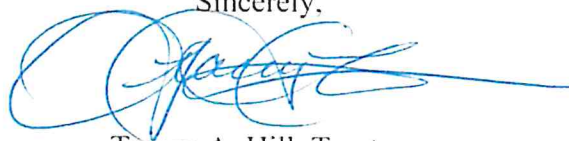
Because my easement encumbers such a significant portion of the applicants' parent parcel, the City should not have accepted or deemed this application complete without my signature on or consent to the application. This partition so significantly affects my protected property right in this easement, that the City should have required my signature or consent as an "owner" before accepting the application. *See* STMC 17.140.030.

Finally, the City should not approve this partition and simply relegate my easement to a condition of approval. Because my easement represents a significant encumbrance over a large portion of the parent parcel and represents a legal obstacle to approval, the City should deny the application. The applicants have not contacted or approached me about this application or my easement, which should occur before preliminary partition approval; therefore, I am quite confident that compliance with the Director's suggested Condition 2b will not be a simple matter, to the extent it is even possible. So long as my easement encumbers title to the parent parcel, the proposed partition is legally impossible, and the existence of my easement warrants denial. Quite frankly, the City should not extend more effort in this partition than the applicant is apparently willing to invest. Moreover, the City should not accept a resubmission of the application unless or until the applicant first addresses my easement.

**B.** SHMC 17.140.055 prohibits approval in any event. The parent property is zoned R10, and the application proposes the creation of a "flag lot" (Parcel 2) as defined in SHMC 17.16.010. SHMC 17.140.055 prohibits approval of a flag lot on this R10 zoned property ("The creation of flag lots is permitted only in the R-5, AR, MU, and MHR residential zones."). Therefore, this application must be denied regardless of the easement that encumbers the property.

Please add my name to the list of people with standing and those entitled to notice of all decisions and other actions in this matter. Thank you for considering my comments.

Sincerely,



Tracey A. Hill, Trustee  
Tracey A. Hill Family Trust

/tah



Agnes Marie Petersen  
Robert P. VanNatta  
Mary Anne Anderson

VanNatta, Petersen & Anderson  
Attorneys At Law  
P.O. Box 748 • 222 S. First Street  
St. Helens, Oregon 97051

Item 1.

Phone: (503) 397-4091  
FAX: (503) 397-6582

April 07, 2020

RECEIVED

APR 07 2020

CITY OF ST. HELENS

**To:** City of St Helens Planning Department  
265 Strand Street / PO Box 278  
St Helens Oregon 97051

**RE:** Partition PT1.20 – Schlumpberger  
Tax Map #5N1W-34BC-00200 and #5N1W-34-201

**Our Client:**

Kathleen Ward  
140 Belton Road  
St Helens Oregon 97051 (Tax lot # 5134-00-200)

Dear City of St Helens:

This letter is in response to PT1.120. Our Client, Kathleen Ward, owns the property directly east and downhill of the above referenced properties and partition proposal. She has concerns about this proposal, This letter is to address questions regarding the report and the preliminary plat, to request additional conditions of approval, and suggest other alternatives to the proposed configuration of this development.

Mrs. Ward thanks you for considering these comments. She is most anxious to enjoy a friendly relationship with her neighbors, Andrew and Lindsay Schlumpberger. She would as necessary agree to an extension of the Appeal period because of the present pandemic in the United States.

Mrs. Ward has lived at 140 Belton Road many years. The properties on Belton Road are secluded, on peaceful wooded lots where the nature all around provides separation and privacy between the houses. Most residents of the area do not even have window blinds or drapes.

Many houses enjoy views of the Columbia River. In fact, the former owners of this property, the Sorensens, purchased from Mrs. Ward the area of land subject to this partition. They purchased the property from Kathleen Ward in order to protect their unencumbered view between their house and the Columbia River. Sorensens agreed with Mrs. Ward they would never build down there below their home, thus preserving the natural view for Sorensens and Mrs. Ward

### **Comments and concerns:**

**Width of the proposed access easement:** The report appears inaccurate where it says “parcel 2 meets the cul-de-sac standard given a proposed 40’ wide access and utility easement”. (top of page 6 of 9). The preliminary partition plat drawing by Reynolds Surveying does show a 40’ easement on the east side, However on the south side where the easement turns west to connect to Belton Road it is shown as only 20’ wide. Should it be 40’ wide along the entire length including where it connects to Belton Road? If the “cul-de-sac” standard apparently requires a 40’ frontage then is not the frontage measured where it connects with the public right of way?

The fact that there are older nonconforming easements that serve other properties is not relevant to this decision. The decision should stand on its own merits. Those other easements are pre-existing. They legally benefit other properties not the proposed new parcel. We would argue that the definition of cul-de-sac “frontage” is where the “frontage” meets the public street, not to where it meets another private easement. The new parcel cannot piggyback on nonconforming easements for its “frontage”.

Furthermore, the south leg of the driveway already serves three other houses. It seems contrary to best planning practices that the portion of the driveway that will serve more houses, i.e. more traffic, is proposed to be a narrower right of way. Is this a mistake? It must be.

**Fire protection:** Based on the provided drawing the length of the easement is approximately 400' long and we assume that the actual driveway would be closer to 450' to 500' long. Although the report says that the driveway will be 10' wide it is our understanding that fire department access widths are actually wider, usually a minimum of 12' wide or more. Further, if a driveway is longer than 150 feet, as is the case, there are additional requirements like passing pull-outs, turn-arounds, and sometimes fire sprinklers are required in the buildings. None of this is addressed in the report. In reality this driveway will serve, when this new parcel is developed, four houses. Perhaps, because the driveway is so long a fire hydrant is needed considering there are other existing houses down this driveway.

Although this property is technically located within the city limits, as stated before, this is very much a wooded park-like setting, perhaps as a condition of approval a fire protection zone should be established around any new structures similar to what is required in rural areas.

**Stormwater:** The report says the following: "Stormwater is not an (sic.) significant issue as the site slopes to and abuts the Columbia river. Dalton Lake is nearby too." (page 4 of 9). This statement completely ignores an existing natural spring that exacerbates the stormwater problem that needs to be addressed.

The Ward property is directly east and downhill from the subject property. More or less directly uphill from the Ward front door a 12" (approximately) stormwater pipe discharges on the subject property. That water runs down onto the Ward property. Over the years this has been a continual problem and often sandbags from the City have to be piled up to keep the water coming out of that pipe and running down and across the Ward's driveway. Attached are photographs that show the stormwater pipe discharge point and sandbags that were placed not long ago, and photographs looking down from the approximate property line to the Ward house. Multiple times water has run across the driveway, running down the



north side of the house to the lower level, running through and eroding the flowerbeds below the house.

The new driveway is proposed to be constructed in this area. We request that there be conditions of approval dealing with the following: 1.) It should be a condition of approval that all stormwater discharging directly uphill from the Ward property and house be dealt with. We recommend that the stormwater discharging from that pipe be somehow directed down the new driveway and dealt with on-site or before discharging to the Columbia River or Dalton Lake or whatever best practices dictate. 2.) Any new stormwater runoff from the new proposed driveway should not run onto the Ward property, 3.) We further recommend that it be a condition of approval that any other pipes or runoff that Mrs. Ward is unaware of (downspouts, driveway surfaces etc.) that are running downhill onto her property be incorporated into whatever is designed.

**Landscaping and Trees:** As mentioned above and indicated in the report this area of St. Helens is secluded and park like. The houses are separated from one another by the woodlands that exist between them. Attached are photographs showing the existing trees. That landscape buffer between the Ward home and the (current) Schlumpberger house will have to be removed in order to build the new driveway. (see attached areal photograph from City GIS website, circled is the area where existing buffer is located, the location of the stormwater discharge, and an alternate location for a driveway. ( See below).

The report indicates that there is a requirement to replant trees where trees are removed. (Condition 2a, condition 7a, and condition 10.) We recommend as a condition of approval that trees be replanted as required by the code in the general area where the trees are removed.

A 12 foot wide driveway can be placed in the middle of the 40' access way, which would leave 14 feet on each side. Trees and other landscaping can be planted along the driveway, reestablishing a buffer between the Ward property and

the applicants' property. At a minimum we request as a condition of approval, that a 14' wide landscape buffer be established on the east side of the new driveway.

**Location of proposed Driveway (access easement):** Alternatively, it would seem to be much more practical, and probably less expensive, for the driveway to be on the west side of the Schlumpberger's (current) house and connect to Belton Road at the corner. In fact that is how the riverfront was accessed by the previous owners in the past.

It appears that the rationale against a west-side driveway for the location of the proposed access easement and driveway is because of the existing drain-field and easement. The report indicates that the drain-field is no longer needed and the City is requiring that the easement be legally abandoned (condition 2b). If that is the case, it appears that there is no longer any legal or practical rationale for not allowing a driveway to connect on the west site of Schlumpberger property at the corner of Belton Road.

Furthermore, by connecting on the outside of the corner, a driver coming out of a driveway at that location would be able to see in both directions on Belton Road. There would be no sight-distance issues. We see no reason why access to the lower portion of the Schlumpberger property (new parcel) couldn't be where it had been accessed in the past. In fact, such a driveway at what is now a blind corner on Belton Road would enhance safety issues by widening the corner where a new driveway would "Y" off of Belton road.

**Sensitive Lands:** We request that as a condition of approval that no development occur in the sensitive lands areas of Dalton Lake and the Columbia River including structures, ADUs, accessory buildings, paved areas, boat launch ramps, gazebos or the like, or docks.

Sincerely,

  
Agnes Marie Petersen, Oregon State Bar 60 067 8





Stormwater discharge pipe.

Sandbags





LUBA Page 249

From below the property line house looking downhill toward Ward house.

During storms water runs down and across the driveway, down side of the house to the lower level and through the flower beds at the lower level.



Wooded area to be removed for driveway



From Ward house looking uphill.

Sandbags

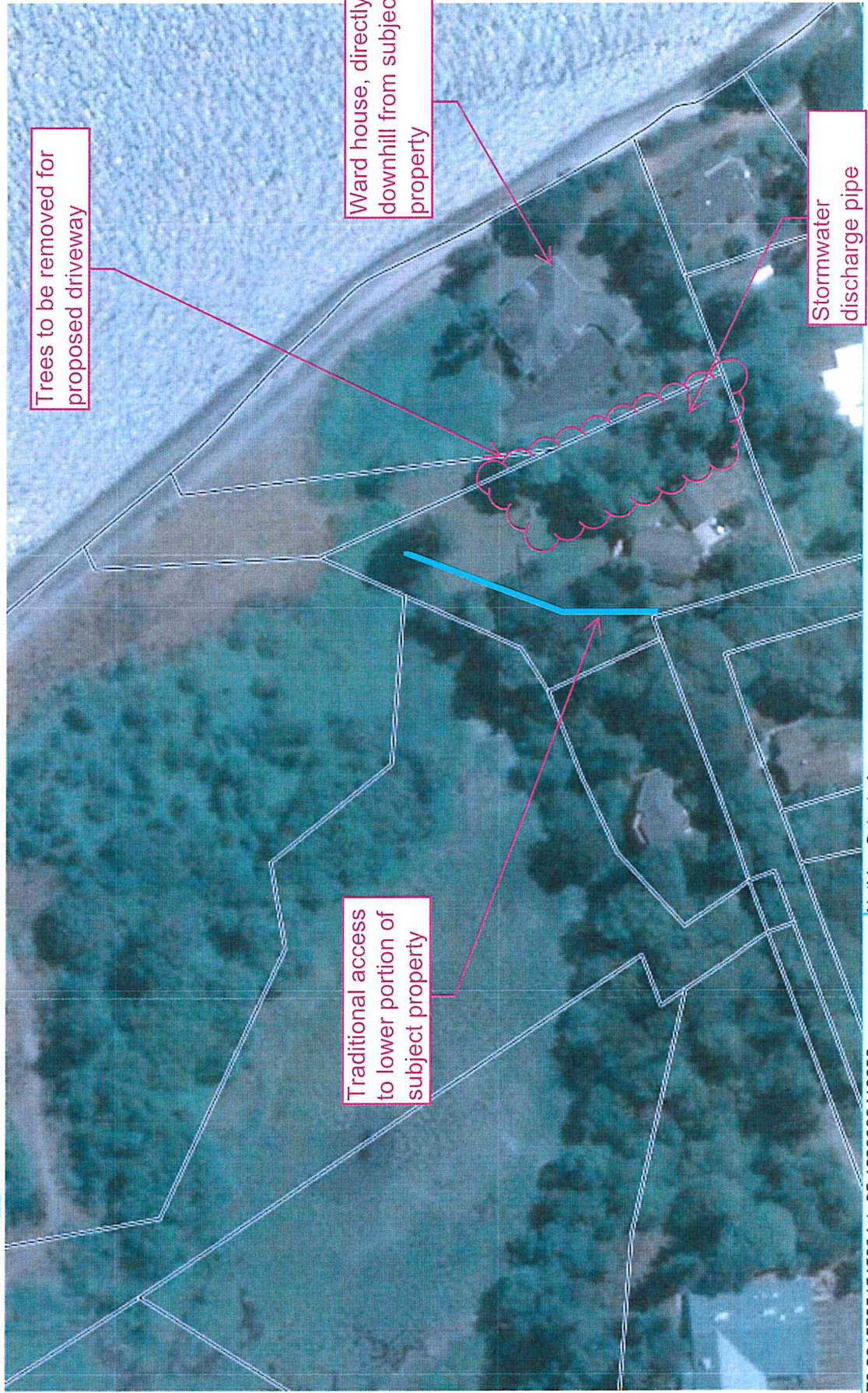




# Saint Helens, Oregon

Online Mapping Service

Go to: [Saint Helens, Oregon Home Page](#)  
Go to: [Map Help](#)



170.2945595 151598.lat=35.12930934 19098

Nothing Selected

Item 1.



RECEIVED

APR 08 2020

CITY OF ST. HELENS

TO: City of St. Helens Planning Department  
RE: Partition PT.1.20

FROM: Robin Nunn

This letter is to address some concerns raised in response to Partition PT.1.20 dated March 25, 2020. My husband and I own 100 Belton Road, the property south of 160 Belton Road.

8(7) The finding of "no need to modify the road" is not in the public interest for safety.

My main concern is the added vehicular traffic that will result from this proposal. Belton Road has morphed from a once-unpaved single-home private drive, meandering around rock croppings and stands of trees. Since the city took acquisition, pavement has improved the road and widened previous problem areas. Currently approximately 14 resident drivers successfully navigate this road but are often subject to backing around the 90 degree blind corner at the top of the hill when confronted by the mailman and growing number of delivery trucks which do not back up. We often meet joggers, bikers, walkers with small children and pets on that blind corner causing a dangerous, tense situation. When two vehicles meet, one must back up to the entrance of 160 Belton Rd or 250 Belton Rd.

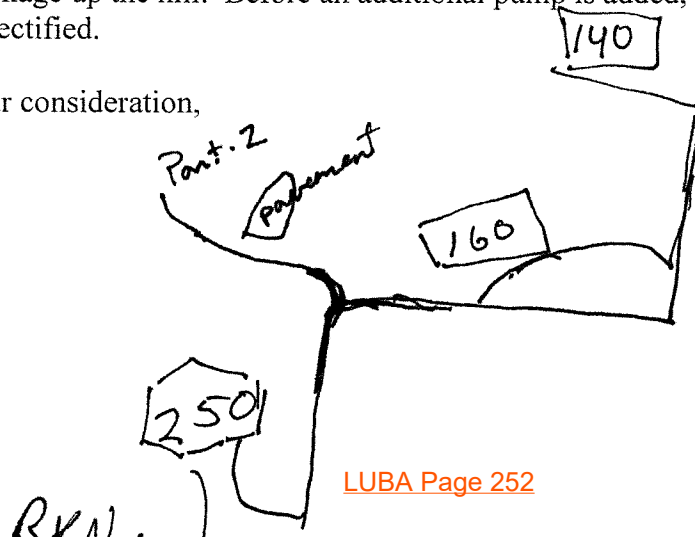
6-a With an additional dwelling plus the heavy equipment necessary for the build, there is heightened potential danger which could result in a tragedy. With the city requirement of a necessary "turnout", it seems this corner could be smoothly transitioned to accommodate this road modification. An extension added to the north would form a "Y" with the left branch heading naturally down to the paved area of Partition 2. Not only would this allow visibility for all oncoming vehicles, it will also allow easier passage for emergency vehicles and larger trucks to veer left to the building site rather than turn 90 degrees right on the blind corner and then 90 degrees left from Belton Rd to the proposed driveway on the east side of 160 Belton Rd. This will allow clear vision from all driveways and roads, improving safety for the entire neighborhood. *See below*

7.11 I'm also concerned that the wetlands report suggests that the proposed dwelling will not be affected by the flood plain. In 1996 that site was under more than several feet of water during which time Dalton Lake and the Columbia river became merged and remained so for some time.

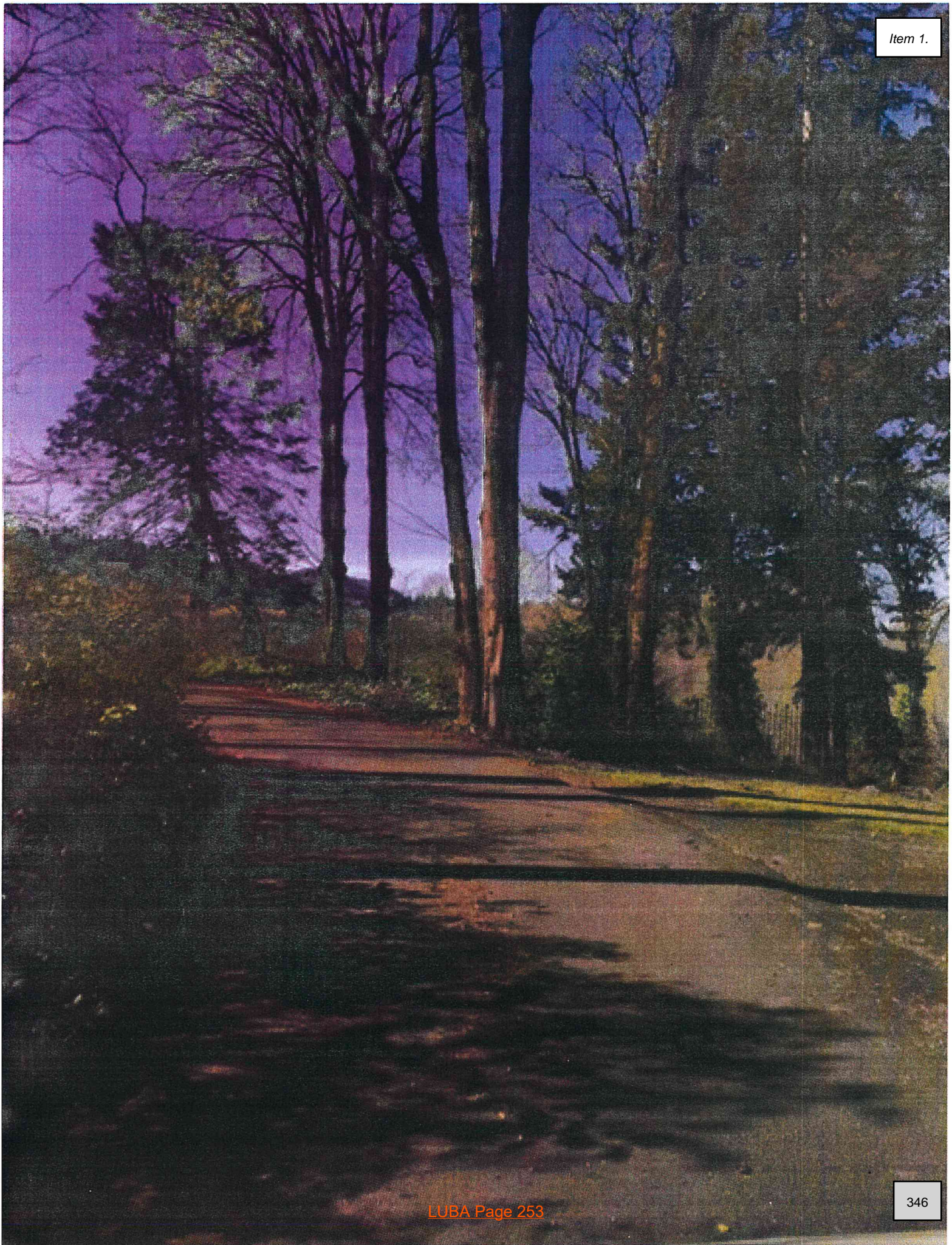
Engineer Report – (I'm unsure of what is referred to as Forest Park Road) The findings of SCE states that there "should be no issues with an additional connection to Belton Rd STEP", but the fact is that issues already exist. Since the sale of 160 Belton Rd, the septic pump at 140 Belton Rd has failed two times. Melvin Moore Co has confirmed that the problem is not at 140 Belton Rd, but caused by an undetermined blockage up the hill. Before an additional pump is added, this pattern of blockage should be identified and rectified.

Thank you for your consideration,

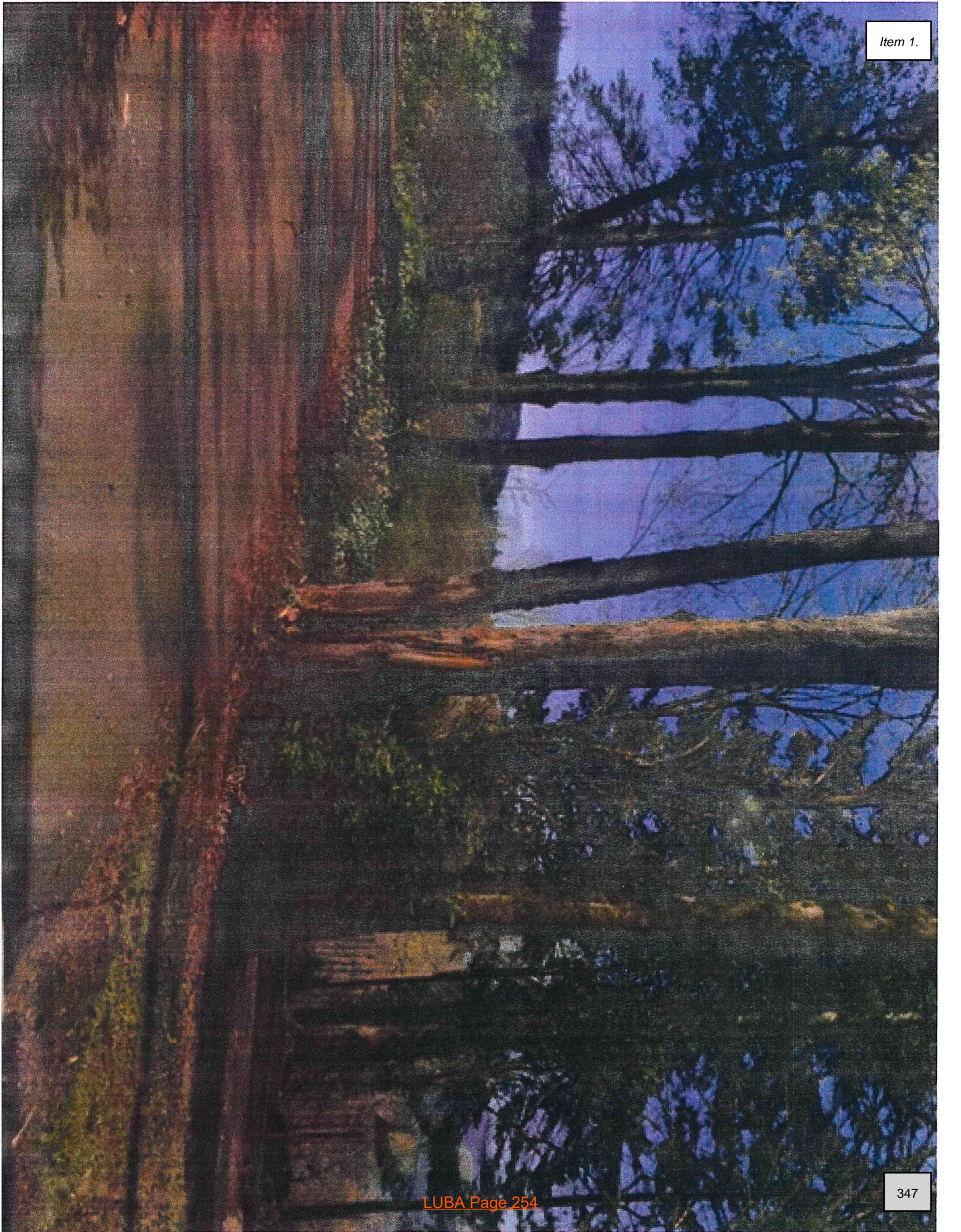
Robin Nunn  
160 Belton Road



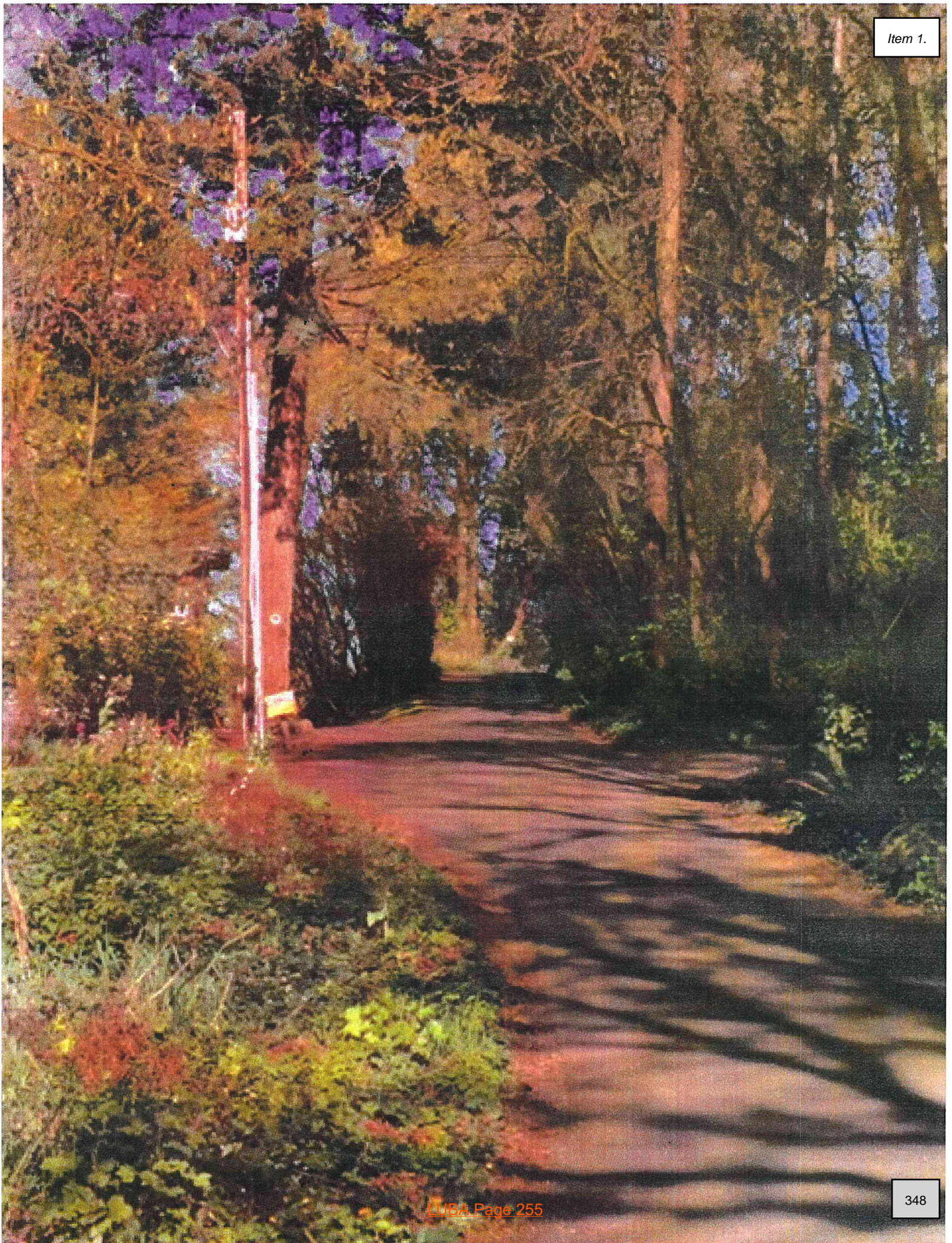




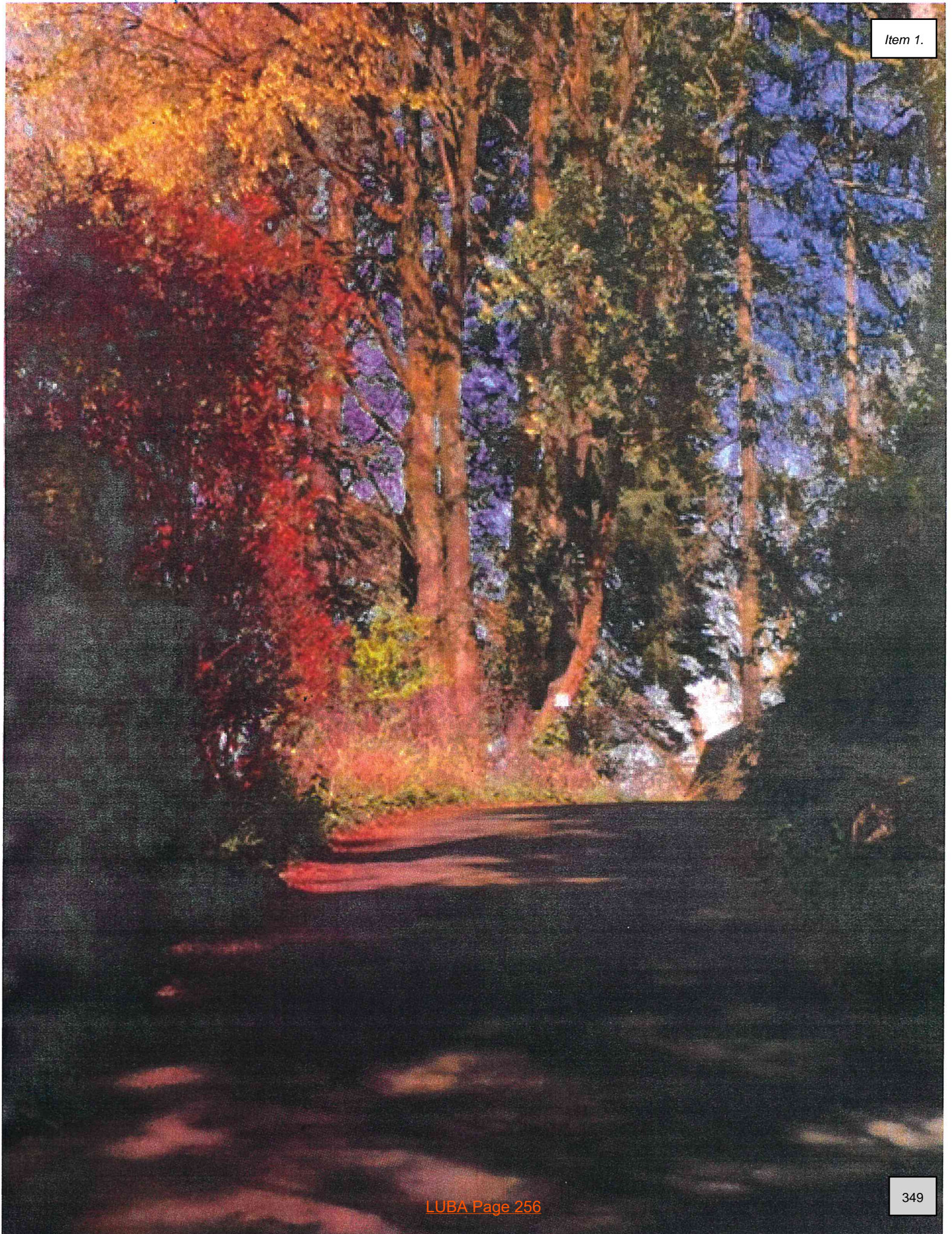


















# AFFIDAVIT OF PUBLICATION

COUNTY OF COLUMBIA  
STATE OF OREGON SS.

I, Jeremy Ruark, being first duly sworn, depose and say that I am The Publisher of The Chronicle, a newspaper of general circulation, as defined by sections ORS 193.010 and 193.020, printed and published at St. Helens, in the aforesaid county and state; that the

City of St Helens  
Public Hearing  
CH20-1412

**FILE COPY**

Was published 1 (one) successive and consecutive week(s) in the following issues:

**RECEIVED**

May 27

JUN 19 2020

CITY OF ST. HELENS

Jeremy Ruark

Subscribed and sworn before me this

12th day of June, 2020

Kelli Nicholson



CH20-1412

## NOTICE OF PUBLIC HEARING NOTICE IS HEREBY GIVEN

that a public hearing will be held before the City of St. Helens Planning Commission on Tuesday, June 9, 2020 at 8:00 PM. Due to the COVID-19 pandemic and the Governor's declared state of emergency (March 8, 2020) and subsequent Executive Order No. 20-16 (April 15, 2020), the public hearing will be held in the City Council Chambers, located in the City Hall building at 265 Strand Street, St. Helens, OR, and/or virtually via a phone-and-internet based application. In-person access into City Hall for this hearing will be from the plaza side entrance. Virtual access information to join the hearing will be available on the City's

Planning Commission website page: <https://www.ci.st-helens.or.us/bc-pc>. The purpose of this hearing is to consider an application as follows: File No: Appeal AP.1.20 This is an appeal of Partition PT.1.20 which was originally approved with conditions by the City Planner by an amended decision. Applicant: Andrew and Lindsay Schlumpberger Appellant: Tracy A. Hill Request: Divide property into two (2) parcels Location: 160 Belton Road Map No: 5N1W-34BC-1100 and 5N1W-34-201. Testimony from the public in both oral or written form is invited. For public health reasons, you are strongly encouraged

to participate by mail or email (in advance of the hearing), or virtually to attend the hearing. If you plan on attending the hearing in person, please contact the Planning Department so we can prepare accordingly. Persons attending a meeting in person will be expected to maintain appropriate social distancing (6 feet or more between individuals) and other COVID-19 precautions to the maximum extent possible. It is possible that the amount of people allowed in the Council Chambers will be limited for these purposes. If there is no request to attend the hearing in person, the hearing will be held virtually only as allowed by

the Governor's Executive Order No. 20-16. The hearing will be conducted in accordance with those procedures found in the City Development Code (SHMC Title 17) Chapter 17.24 and any rules of procedure adopted by the City Council. The Planning Commission is authorized to approve, deny, or approve this application with conditions, based on the following criteria: St. Helens Municipal Code (SHMC) Sections 17.140.040 and 17.140.050 Failure to raise an issue, including constitutional or other issues relating to any proposed conditions of approval, in this hearing, in person, or by letter, or failure to raise

an issue accompanied by statements or evidence sufficient to afford the approving authority an opportunity to respond to the issue precludes appeal to the applicable appellate jurisdiction (e.g., the Land Use Board of Appeals, LUBA) on that issue, and precludes an action for damages in circuit court. The application file is located at City Hall (265 Strand Street, St. Helens, OR) and all documents in the file are available for inspection. A copy of the staff report will be available for review at least seven (7) calendar days prior to the hearing. There is no cost to inspect the file or staff report; copies are

available at a reasonable cost. As City Hall is closed during this pandemic, please contact someone in the Planning Department to make arrangements to review the file. Questions should be directed to the City Planning Department by phone: 503-397-6272, e-mail: [jacobg@ci.st-helens.or.us](mailto:jacobg@ci.st-helens.or.us), mail: 265 Strand Street, St. Helens, OR 97051, or in person (by appointment only) at City Hall. Anyone needing special assistance should contact City Hall at least 72 hours in advance to ensure the necessary assistance is available. The Council Chambers are fully accessible.

Item 1.

351



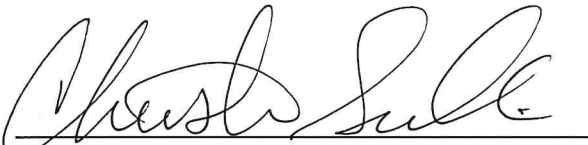
**AFFIDAVIT OF MAILING**

STATE OF OREGON                     )  
   )  
 County of Columbia                ) ss.  
   )  
 City of St. Helens                 )

I, Christina Sullivan, being first duly sworn on oath, depose and say:

1. That I hereby certify that I mailed a copy of the attached document(s) to the affected parties listed on the attached sheet(s); and

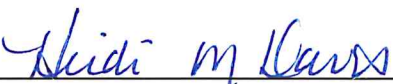
2. That I served said notice by depositing a copy thereof in the United States Mail at St. Helens, Oregon, on **May 21, 2020**. I further state that said copies were enclosed in envelopes with postage thereon prepaid and that said copies were sent by first class mail.



Christina Sullivan  
 Community Development Administrative Assistant

Subscribed and sworn to before me this 21<sup>st</sup> day of May, 2020



  
 Notary Public for Oregon

Reference: **Tracey A. Hill Family Trust**  
**Appeal / AP.1.20 (Appeal of PT.1.20)**  
**5N1W-34BC-1100 & 5N1W-34-201**  
**160 Belton Road**

## Partition - Appeal Notification List

**Date Mailed:**      **May 21, 2020**

**Subject:**      **Tracey A. Hill Family Trust  
Appeal / AP.1.20 (Appeal of PT.1.20)  
5N1W-34BC-1100 & 5N1W-34-201  
160 Belton Road**

**Applicant:**

Tracey A. Hill Family Trust  
250 Belton Road  
St. Helens, OR 97051

**Property Owner:**

Andrew & Lindsay Schlumpberger  
160 Belton Road  
St. Helens, OR 97051

**Referrals sent by e-mail:**

Jeff Pricher, Fire Marshall	Columbia River Fire & Rescue
Sue Nelson	Public Works Engineering Director
Mike DeRoia	City Building Official
Dave Elder	Public Works Operations Director
Brian Greenway	St. Helens Police Chief
Aaron Kunders	WWTP Superintendent
Stewart Hartley	WWTP Operator IV/Pretreatment Coordinator
Staff - See email list	Columbia 911 Communications District
Columbia County	Surveyor
*ODOT – Plan Manager	Oregon Department of Transportation
**Columbia County	Road Department

**\*Notify only if the land division is on property adjacent to ODOT right-of-way.**

**\*\*Notify only if the land division is on property adjacent to County right-of-way.**

**F.Y.I.**

Ginny Carlson, City Councilor  
Keith Locke, City Councilor



Notice Area

A		B	C	D	E	F	G
2	BARKER JOHN PHILIP & BARKER MAUREEN E		5N1W34BC 1203	P O BOX 262	ST HELENS	OR	97051
3	BELCHER JERRY D & LYNN L		5N1W34BC 1202	105 BELTON RD	ST HELENS	OR	97051-1019
4	HILL TRACEY A FAMILY TRUST		5N1W34BC 1101	250 BELTON RD	ST HELENS	OR	97051
5	NUNN RON E AND ROBIN K		5N1W34BC 1000	100 BELTON RD	ST HELENS	OR	97051
6	OREGON DEPARTMENT OF TRANSPORTATION	DISTRICT 2A	5N1W3400 105	6000 RAAB RD SW	PORTLAND	OR	97231
7	PARKER GEOFFREY		5N1W34BC 901	PO BOX 1084	CAMAS	WA	98607
8	SCHLUMPBERGER ANDREW L & LINDSAY		5N1W34BC 1100	160 BELTON RD	ST HELENS	OR	97051
9	WARD KATHLEEN & BROWNLOW C T		5N1W3400 100	140 BELTON RD	ST HELENS	OR	97051
10							

## Christina Sullivan

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**From:** Christina Sullivan  
**Sent:** Thursday, May 21, 2020 11:23 AM  
**To:** Aaron Kunders; Brian Greenway; 'C911 - Cindi'; Dave Elder; Ginny Carlson; 'Jeff Pricher, Fire Marshall'; Keith Locke; 'Mike DeRoia (Miked@ci.st-helens.or.us)'; 'Nathan Woodward - Columbia County Surveyor'; Stewart Hartley; Sue Nelson  
**Subject:** City Referral - Tracey Hill  
**Attachments:** AP.1.20 Tracey Hill (Appeal of PT.1.20).pdf

**Tracey A. Hill Family Trust**  
**Appeal / AP.1.20 (Appeal of PT.1.20)**  
**5N1W-34BC-1100 & 5N1W-34-201**  
**160 Belton Road**

The attached materials have been referred to you for your information and comment. Your recommendations and suggestions will be used to guide the staff and Planning Commission when reviewing the proposed request. If you wish to have your comments on the attached material considered, please respond by May 29, 2020.

Your prompt reply will help to facilitate the processing of this application and will ensure prompt consideration of your recommendations.

Thank you,

*Christina Sullivan*

Community Development Administrative Assistant  
 City of St. Helens  
 Direct: (503) 366-8209  
 Main: (503) 397-6272  
[www.ci.st-helens.or.us](http://www.ci.st-helens.or.us)

## NOTICE OF PUBLIC HEARING

Item 1.

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City of St. Helens Planning Commission on Tuesday, June 9, 2020 at or after 8:00 PM. Due to the COVID-19 pandemic and the Governor's declared state of emergency (March 8, 2020) and subsequent Executive Order No. 20-16 (April 15, 2020), the public hearing will be held in the City Council Chambers, located in the City Hall building at 265 Strand Street, St. Helens, OR, **and/or** virtually via a phone-and-internet based application.

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	This is an appeal of Partition PT.1.20 which was originally approved with conditions by the City Planner by an amended decision.
Applicant:	Andrew and Lindsay Schlumpberger
Appellant:	Tracy A. Hill
Request:	Divide property into two (2) parcels
Location:	160 Belton Road
Map No:	5N1W-34BC-1100 and 5N1W-34-201

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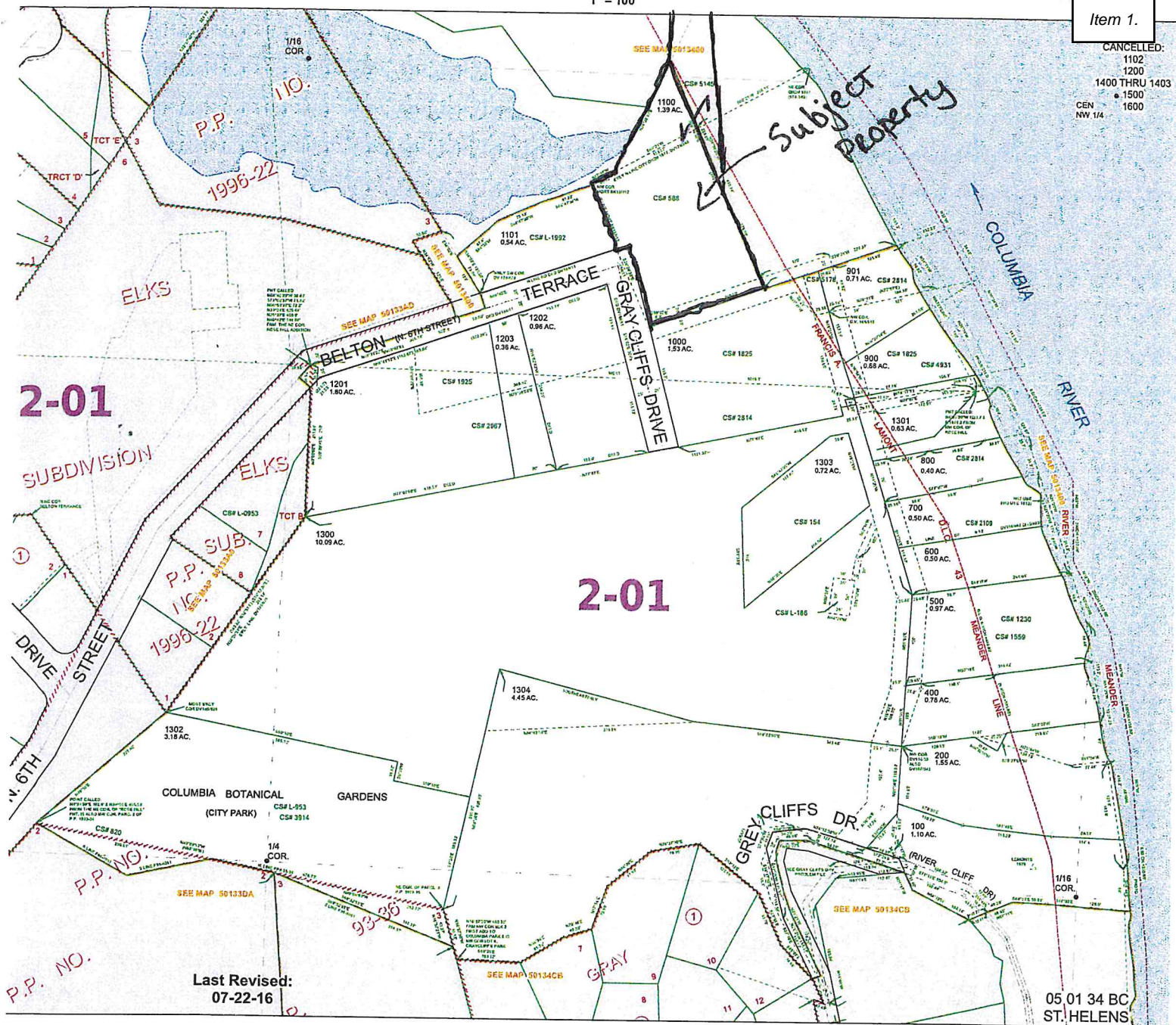
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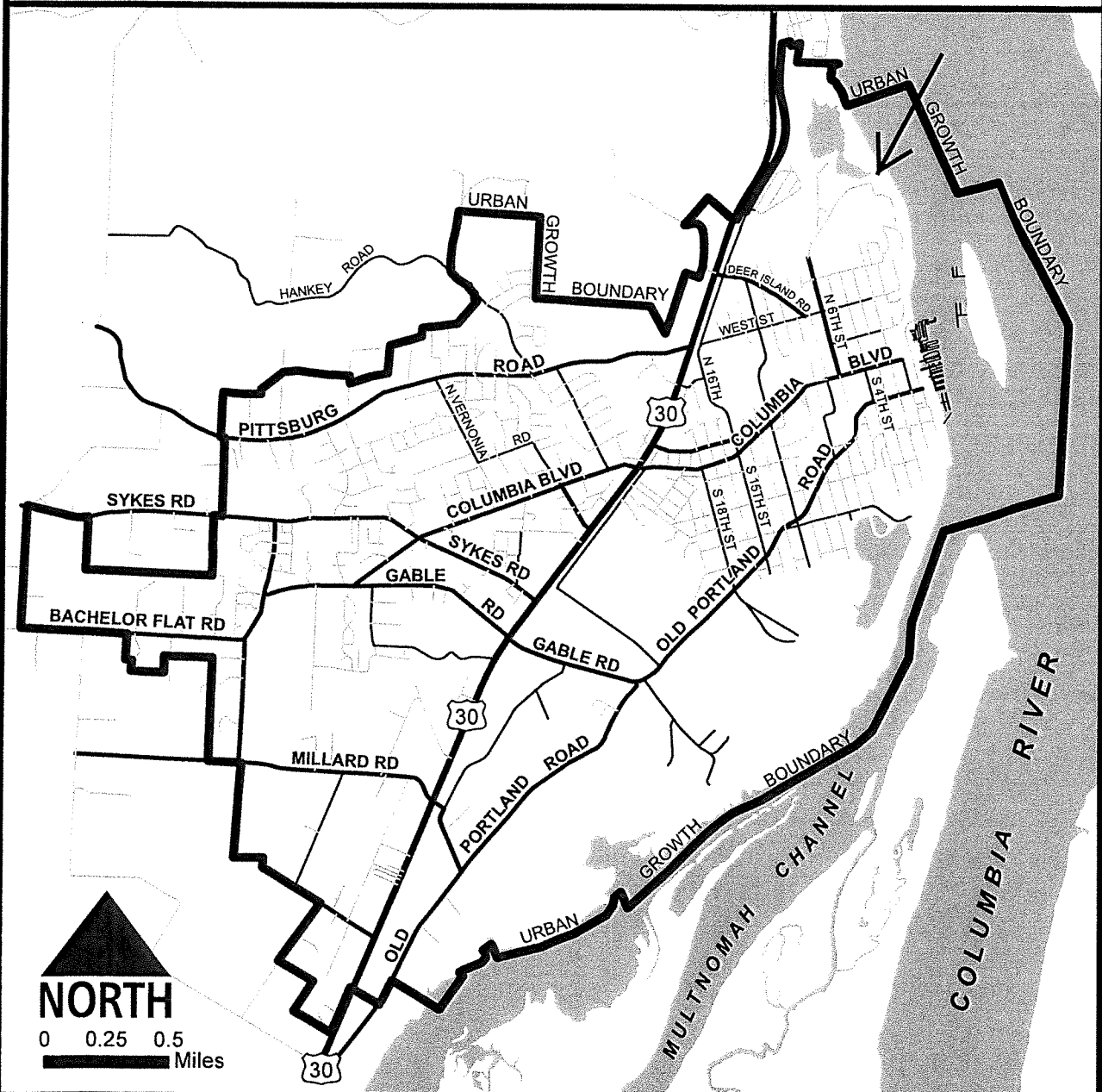


**CANCELLED:**  
1102  
1200  
1400 THRU 1403  
• 1500  
1600



# SUBJECT PROPERTY

~ Approximate Location ~



City of St. Helens Urban Growth Boundary Area Vicinity

jag/Dec. 2013