

LACAMAS SHORES – 2023 SPECIAL ASSESSMENT

To: Lacamas Shores Homeowners

From: Steve Bang

September 18, 2023

Dear Homeowners,

I am writing you this letter in response to the notice and associated FAQs distributed to you by the Lacamas Shores Homeowners Association regarding an owners' meeting on October 4th to approve a special assessment of \$1,700 per household. As indicated in that notice, the assessment is being requested by the HOA to fund certain modifications to the storm drainage and treatment system on HOA-owned property. As further indicated in the notice, I am currently in litigation with the HOA regarding the HOA's failure to maintain this system.

The purpose of this letter is to correct certain mischaracterizations in the HOA's communication to ensure that you have an accurate understanding of the HOA's maintenance failures and the extent to which the HOA's requested assessment will remedy these failures and/or resolve the outstanding litigation.¹

Mischaracterization #1: The work that would be funded by the HOA's special assessment will not be wasted if Steven Bang wins the lawsuit and the HOA is required to remove the trees within the Biofilter and plant grasses. [FAQs 8, 14]

Truth: I have already won my claim that the HOA is in violation of the CC&Rs for failure to maintain the storm drainage and treatment system. The trial court issued an order on July 3, ruling:

“The Defendant [HOA] is in violation of the Declaration of Covenants, Conditions, and Restrictions for the Lacamas Shores Development by failing to maintain the storm drainage and treatment system located on Defendant's property.”

Maintenance of the system requires restoring it to its original, functioning condition, including clearing the bubbler pipes, removing inappropriate vegetation (such as the trees whose roots are clogging the pipes), and replanting it with high-filtering and easily harvestable vegetation. If the trial court directs the HOA to restore the Biofilter to its original condition, which it should, then

¹ The HOA's communication include a number of omissions or mischaracterizations beyond those detailed below, including the HOA's rationale for hiring a company to evaluate the storm drainage and treatment system and the timing of the HOA moving forward with repairs to the system. Among other things, the HOA only hired a consultant to investigate the condition and effectiveness of the system after I filed a 60-day notice that I intended to sue the HOA for violating the CWA, and it is only now seeking funds to repair the system after the trial court determined the HOA is in violation of the neighborhood's CC&Rs (despite the fact that the HOA's own consultant identified numerous system failures well over a year ago).

the work funded by the special assessment will be a waste of resources. The problem with the existing bubbler system is that the HOA has allowed trees to dominate the Biofilter, and the roots from these trees are clogging the pipes. Removing the trees and installing high-filtering vegetation will solve the problem with the existing bubbler pipes. Constructing a new system of above-ground pipes is a complete waste of HOA resources.

In addition, while the HOA has not shared its specific repair plans with us, from the information that the HOA has shared, my consultant (the same professional who designed the treatment system on the property) does not believe that the HOA's proposed, new system will effectively fix the problem because after that system is installed the Biofilter wetlands would still not be dominated by high-filtering vegetation such as grasses which are required to keep it functioning. Therefore, even if the HOA's proposal is implemented, the Biofilter will still be in a state of disrepair and polluting Lacamas Lake. Fixing the Biofilter wetlands is integral to effectively solving the failed state of the storm drainage and treatment system, and if the HOA fixes the wetlands, resolving the other issues (bubblers, manholes, etc.) will require less extensive efforts.

Mischaracterization #2: The City of Camas and the State of Washington have already determined that trees cannot be removed from the Biofilter, and only a court order could reverse this determination. [FAQ 9]

Truth: Neither the City nor the State have made formal, binding decisions that tree removal is not allowed in the Biofilter. At most, there have been informal communications including letters to this effect. Therefore, there is no City or State determination for a court to overturn.

The Biofilter is a permitted treatment facility, and City law contains clear exceptions under which treatment facilities such as the Biofilter are not subject to the normal restrictions governing tree removal in wetlands. Because the City and State have not made formal, binding decisions that tree removal in the Biofilter is not allowed, I requested an official code interpretation from the City regarding the regulatory status of the Biofilter. The City refused to process that request because it was submitted by me as an individual homeowner and not the HOA. If the HOA genuinely wanted to see this issue resolved, it would have supported my request or filed its own code interpretation. But the HOA did neither of these things. Instead, it sided with the City and argued that I should not be able to seek a formal determination as to the regulatory status of the Biofilter.

Even if the Biofilter were subject to all restrictions governing natural wetlands, which it isn't, tree removal can still be authorized provided appropriate mitigation is implemented. But the HOA has also not submitted any applications requesting a permit to maintain and restore the Biofilter. Thus, the HOA's claim that the City and State won't let it maintain the Biofilter by removing inappropriate vegetation and planting appropriate vegetation is incorrect.

Mischaracterization #3: I am only interested in tree removal, and removing trees is not appropriate for the HOA Biofilter. [FAQ 7]

Truth: My interest is ensuring the HOA fulfills its obligations to maintain the storm drainage and treatment system on the HOA's property to protect water quality in Lacamas Lake. This duty

was imposed on the HOA by the City and State for the benefit of the homeowners within the HOA and the broader public. The system was properly constructed and, initially, maintained. Monitoring studies demonstrated that it effectively removed pollutants from stormwater generated within the Lamas Shores community.

The HOA has failed to maintain the system in recent years. Studies consistently demonstrate that the system is not removing pollutants in compliance with established water quality standards. Even the HOA's own hand-selected consultant documented numerous failings with the system over a year ago, including bubbler pipes clogged with tree roots, excessive channelization, overflowing manholes, and uneven laminar flow within the Biofilter.

The work that the HOA is asking you to fund will not return the system to its original, functioning condition. It would fund an alternative system that would not remove pollutants as effectively as the currently-permitted system. Stormwater treatment manuals consistently advise operators to maintain stormwater treatment wetlands, such as the Biofilter, with vegetation such as grasses that are both high-filtering and easily harvestable (the act of harvesting permanently removes pollutants from the system). They do not recommend treatment facilities be dominated by large trees. These trees do not filter pollutants as efficiently as low-lying vegetation, and they cause other problems such as clogging pipes and creating areas of standing, stagnant water.

Mischaracterization #4: The attorneys for the parties are discussing settlement, including mediation.

Truth: I have always wanted to resolve this dispute as quickly and as inexpensively as possible, and I have been open to settlement discussions since I sent my letter noting I intended to file a Clean Water Act lawsuit. I have also been transparent with the HOA in my desired outcome, and I even offered to withhold filing lawsuits against the HOA if they would simply work with me to resolve the only impediment that the HOA has identified to restoring the Biofilter to its original, functioning condition (that the work requires a permit from the City). As discussed above, rather than work collaboratively with me, the HOA refused to seek this clarification and instead actively fought my attempt to do so.

The HOA has occasionally suggested a willingness to settle the lawsuits, but it never meaningfully follows through on these suggestions. For example, the HOA has apparently approved entering mediation, but my attorneys have received minimal communications from the HOA in this regard, with no firm proposals or commitments to mediate.

The only reasonable conclusion to draw from the HOA's refusal to resolve the regulatory status of the Biofilter or engage in meaningful settlement discussions is that it is adamantly opposed to restoring the Biofilter to its original, functioning condition. This is concerning from an environmental perspective, given the HOA's proposal to install a new treatment system will not effectively treat stormwater and is inconsistent with the CC&Rs and agency guidance for treatment facilities. But it is also alarming from an HOA membership liability perspective, as the HOA (and thus its members) are liable for my legal fees, which are increasing every day, and potentially significant penalties under the Clean Water Act. To reiterate, there is no need for the HOA to incur this liability and place its members at severe economic risks. It is choosing to place

both me and you at risk, apparently because it is principally opposed to restoring the Biofilter to its original, functioning condition. And it is simultaneously asking you to give your money to the HOA to fund construction of an ineffective treatment system that will not resolve the ongoing litigation or bring the HOA into compliance with the CC&Rs. Regardless of how your vote goes, it does not affect the lawsuits other than to disappointingly show yet again that the HOA's Board is still not interested in trying to settle the lawsuits nor complying with the clear language of the CC&Rs.

Conclusion: The HOA is inaccurately characterizing the status of the litigation, the utility and effectiveness of the alternative treatment system that it is asking you to pay for, and the reason why this dispute has dragged on as long as it has. The HOA's alternative treatment system will cost nearly half a million dollars and solve neither the problems with the failing system nor any of the pending litigation. Meanwhile, the HOA's, and thus all individual homeowners', liability continues to increase each day because the HOA is inexplicably opposed to restoring the system to its original, functioning condition.

I, more than anyone, want to see this dispute brought to a quick and effective conclusion. This has always been about compliance with the law, including the CC&Rs. This is not about what I want, this is about what the law and the CC&Rs require.

This HOA has already been found to be in violation of the CC&Rs, and it needs to focus its time and resources into restoring the storm drainage and treatment system to its original, functioning condition. There is no insurmountable barrier to this restoration. In fact, this is required under the CC&Rs and the shoreline permit governing Lacamas Shores. The HOA must fulfill its duties and abide by these documents rather than waste your money on ineffective and legally deficient solutions.

If anyone has questions regarding the information in the HOA's communications, this response, or the ongoing litigation with the HOA, please feel free to contact me.

Steve

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