

**Comments – May 25, 2023 Public Hearing (PC) Meeting**  
(As Of: 25 May 2023)

Good evening, Planning Commissioners and City Officials.

I have hired a certified Professional Wetland Scientist (which is the gold standard of approval for wetland scientists) with a Ph.D. and 34 years of experience working in wetlands. He is a full professor of biology at Gonzaga University where he has worked for 27 years. Dr. Lefcort has also published 31 scientific studies; 22 of which concern wetlands.

Please remember this is one wetland with two owners. Wetlands are active, living entities so changes are to be expected over time.

I would like to point out to the Commissioners at least four crucial issues with this Notice of Application which is clearly explained by my attorney and Dr. Lefcort in the documents you have received. I have summarized some of their comments into four problem areas of: 1) reasonable use exception, 2) wetland category rating, 3) boundary delineation, and 4) mitigation.

- 1) Applicant’s request for a reasonable use exception does not excuse the scientific and technical failings of the submission nor has the applicant met the requirements for issuance of a reasonable use exception.
  - a) The Code’s requirements are designed to set the minimum requirements for permit applications and mitigation plans. It is precisely the fact that the applicant is requesting special treatment – a relaxation of the rules – that means that the applicant must actually address and consider the specific requirements of the Code before seeking to be excused from them.
  - b) The use of the word “and” in the requirements, shows that the applicant must demonstrate that all seven requirements in the Code must have been met to be eligible for a reasonable use exception. At least three of these criteria are unmet.
    - ◇ (#2) Applicant has asserted, but not supported or explained why the regulation denies the property “all reasonable economic use” unless the applicant can build a house. This burden has not been met. The applicant has not analyzed any other means of producing income from the land. For example, the applicant could potentially operate an apiary (a collection of bee hives) on the property. Many commercial beekeepers migrate their colonies to provide pollination services to farmers while at the same time providing their bees with abundant nectar sources for honey production. The application makes no attempt to consider alternative land uses and thereby assumes without evidence that building a house is the only economic activity available.
    - ◇ (#3) Applicant does not seem to have considered means of moving the disturbance further away from the wetland. Applicant has not sought permission to move the building further away from the wetland by having the lot and front yard setbacks reduced.
    - ◇ (#6) Applicant has not complied with or even addressed the mitigation ratio requirements contained in MLMC. The applicant has failed to demonstrate that the proposal “mitigates for the loss of critical area functions to the greatest extent feasible.”
- 2) Dr Lefcort has showed that the wetland is now a Category II (scored 20 points) due to the hydrological conditions changing from a Category III when the wetland rating report was done in July 2020. This means the wetland is entitled to a higher level of protection today. Since the Code and state law requires “best

available science” to be used, the applicant’s documents do not represent this since the hydrological conditions have changed.

- 3) The 2020 boundary delineation is likely wrong due to these changing hydrologic conditions.
  - a) The site contains wooden stakes that may have been placed there in 2000. If those are indeed the assessed wetland delineation markers (which is consistent with the Notice of Application), then their placement may be in error again due to these hydrological changes.
  - b) According to the Professor, he believes that the wetland extends further to the east than is marked in the mitigation plan and that there is a serious risk that the proposed building site is partially within the wetland itself. This means there is significant risk that the project will inadvertently allow work, to occur within a wetland without SEPA requirements being met.

The Wetland Buffer Mitigation Plan does not meet the minimum requirements set for migration activities IAW MLMC 17.10.090 (H) (4). This is apparent from the fact that the applicant’s submission is based on a version of Chapter 17.10 which is no longer effective.

NOTE: The planting of any plants will use up water and water is self-leveling or it seeks its own level. So, any water reduced on the north side will also be reduced on the south side which is owned by someone else.

- a) The Staff Report (Zoning Code Approval Criteria D) states, “No Net Loss. The proposal protects the critical area functions and values and results in no net loss of critical area functions and values.” According to Dr Lefcort, reducing the footprint of the wetland – by definition – results in a net loss of critical area functions and values. This wetland is very small. A larger wetland may be able to absorb such an insult, but not a small wetland.
- b) Application proposes to permanently eliminate approximately 2700 square feet of Category II wetland buffer. To compensate for this, the applicant proposes to engage in compensatory mitigation but fails to state what kind of mitigation action (replacement, rehabilitation, etc) will be employed – therefore, application is not complete.
- c) Since the type of mitigation action is not explained, I believe that the applicant intends to engage in enhancement mitigation. This kind of mitigation imposes specific requirements, including informational requirements on the applicant which has not been met.
- d) Plan calls for coyote willows and cottonwoods which uses a great deal of water and will alter the hydrologic balance of this small wetland according to Dr. Lefcort.
  - ◇ These plantings do not “mitigate” any ecological function of the wetland that is lost due to development. True mitigation would require reducing street runoff to the wetland and attempting to create a wetland where one does not currently exist.
  - ◇ Per the Professor, adding more plants will not add to the value of the wetland, Ecological theory would suggest that in a stable ecosystem, adding new species will simply result in the local extinction of other species. Adding fill negatively impacts the wetland and additional plant species will increase competition and alter the current hydrologic status.
- e) Dr Lefcort has studied the plan and determined that it is likely to harm or provide no benefit to the wetland given its already high level of biological diversity and dense vegetation and it does not conform with the best available science requirement. Nor is the site suitable for other mitigation strategies – please refer to Dr Lefcort’s letter dated 23 May 2023.
- f) Please note that the buffer that the applicant proposes to build on is healthy and well-vegetated. It is not in need of new plantings. Existing local species are already present and flourishing at the site to include a long-toe salamander.

- g) Application package fails to engage with the requirements regarding mitigation ratios. The Code is specific about just how much compensation is required for mitigation to be legally acceptable. The development proposal does not even attempt to address these requirements, let alone meet them.
- h) In truth, this proposal suggests that the developer can disturb 2700 square feet of a functioning, healthy wetland buffer without replacing or otherwise compensating for the loss. The result will be a reduction in wetland functions. (Dr. Lefcort)
- i) According to the MLMC, critical areas applicants who request a mitigation plan must submit detailed construction plans which include grading and excavation details in the application package. Not complied with.

For these reasons to include also the ones I have stated in the documents provided, the Commission should recommend denial to the City Council. This Commission has a duty to protect the precious environmental resources of Medical Lake. The best way for this Commission to fulfill this duty is to require applicants to conform to the letter of the law. This is the standard that the applicant has not met.

We are a City of Wetlands. May God's grace and protection be with our wetlands and the future of Medical Lake.

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