



MINUTES
City Council Meeting
Monday, February 6, 2023 7:00 PM

COUNCIL PRESENT: Chris Mayton, Councilor; Laurie Smallwood, Council President; Richard Sheldon, Councilor; Kathleen Walker, Councilor; Carl Exner, Councilor; Don Hokanson, Councilor; and Stan Pulliam, Mayor

COUNCIL ABSENT:

STAFF PRESENT: Jordan Wheeler, City Manager; Jeff Aprati, City Recorder; Tyler Deems, Deputy City Manager; Rochelle Anderholm-Parsch, Parks and Recreation Director; Jenny Coker, Public Works Director; Andi Howell, Transit Director; and Kelly O'Neill Jr., Development Services Director

MEDIA PRESENT: Sandy Post

1. Pledge of Allegiance

2. Roll Call

3. Changes to the Agenda

At the beginning of the meeting, **Mayor Pulliam** agreed to a request to place New Business before Old Business on the agenda.

4. Public Comment

4.1.

Tatyana Hancik: is concerned about the planned closure of the Mt. Hood Birth Center; has four children and another on the way; Legacy Emanuel is very far away; people travel from far away to reach the Mt. Hood Birth Center and would have to travel even further to reach Emanuel.

Alicia Manwiller: Legacy says there is a staffing issue, but in fact people do not want to work under an unsafe model of care; the office manager did not sufficiently seek out temporary care providers.

Teddy Glemser: is concerned about the planned closure of the Mt. Hood Birth Center; is a charge nurse in the emergency department; wants to have a child

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at that facility; statistics cited by Legacy about the low demand at the facility do not account for outpatient visits; Randall Children's Hospital has the lowest number of outpatient visits; the burden of a closure will fall on emergency staff who lack sufficient training.

Jennifer Suarez: is a charge nurse in the emergency department; staff faced huge challenges during COVID including seeing patients in closets and hallways; stress led to staff turnover and training problems; closing the Mt. Hood Birth Center will place the burden on the emergency department.

Christina Weathers: has provided care for many decades; the planned closure will eliminate many jobs; women will suffer, including long trips to receive care; OB-GYN professionals provide a variety of very important care; long trips to receive care could result in tragic consequences; asked the City to support their cause and call on Legacy not to close the facility.

Ricky and Jezrai Hower: concerned about the planned closure of the Mt. Hood Birth Center; Legacy needs to find another solution; the plan would place a significant burden on the emergency department, especially as there are many recreational injuries on Mt. Hood; their child would not be alive without the Mt. Hood Birth Center.

Brooke Jennings: is currently beginning her own birth journey; many people she has spoken to have high regard for the Mt. Hood Birth Center; her auto immune issue will mean she will need specialized medical attention during birth; everyone goes to the Mt. Hood Birth Center and many are concerned about closure; this is one more blow to women.

Bill Leslie: is concerned about property taking regarding stormwater; the City is directing a large volume and rate of stormwater across 5 properties, including his own; the properties are not natural wetlands; his property is unusable for months at a time; septic installation is not possible; walked the property with City staff; the County said it was not their problem; the City's actions are not consistent with official policies; this situation creates liability for the City. (Mr. Leslie provided written documents which are attached to these minutes)

[Bill Leslie Written Documents](#)

5. Response to Previous Public Comments
(none)

6. Consent Agenda

6.1. **City Council Minutes**

January 17, 2023

6.2. **Transit Advisory Board Appointments**

Staff Report - 0660

6.3. **Intergovernmental Agreement Between City of Sandy and Clackamas County**

Staff Report - 0658

6.4. **2023 Manhole Grouting Project Contract Award**

Staff Report - 0657

Moved by Richard Sheldon, seconded by Kathleen Walker

Adopt the consent agenda

CARRIED. 7-0

Ayes: Chris Mayton, Laurie Smallwood, Richard Sheldon,
Kathleen Walker, Carl Exner, Don Hokanson, and Stan
Pulliam

7. New Business

7.1. **Discussion Regarding Closure of Legacy Mt. Hood Birth Center**

The **Mayor** provided introductory remarks and thanked the members of the public for providing their comments on this important issue. He stated this topic is being taken seriously by leaders throughout the region. He summarized Legacy's reasoning for the planned closure; he also indicated that a rally was being planned by organizers in the near future.

Council discussion ensued on the following topics:

- The serious lack of adequate ambulance services exacerbates the risks and effects of this closure
- This closure presents a risk to public health
- The City should exert its influence to address the situation, including the **Mayor** and government relations personnel
- Closing the Mt. Hood Birth Center would stress overburdened emergency room facilities
- Life Flight is not a realistic option to mitigate the situation
- The Oregon Health Authority should not approve the closure
- Sandy needs more medical facilities in the area, not fewer; this would be moving backward

- The City of Gresham is developing a letter to state its opposition
- Action on this issue is needed without delay, especially with the risk of losing staff

The consensus of the Council was that the City should send a letter as soon as possible to Legacy executives and the Oregon Health Authority stating its opposition to the planned closure of the Mt. Hood Birth Center.

7.2. **Drinking Water and Wastewater Program Management Contract Award**

Staff Report - 0656

The **Public Works Director** summarized the staff report, which was included in the agenda packet. She also provided clarification on what program management entails, and that the \$7 million in Business Oregon financing does not cover construction costs.

Dick Talley with Stantec introduced himself to the Council. His initial remarks covered the following topics:

- The unavailability of grant funding for public infrastructure compared to the past
- The importance of trust between the Council and the program manager
- Large increases in construction costs in recent years

Mr. Talley also presented slides, which were also included in the agenda packet. Council discussion ensued on the following issues:

- Challenges related to mixing water from Bull Run and Alder Creek within reservoirs once Portland's new treatment plant is in service
- Water treatment methods affect water taste
- Note that the project could be paused if Business Oregon funding is not received
- Differences between Stantec's proposed services and what Leeway Engineering has provided thus far as an Owner's Representative; note that Leeway would transition to a subconsultant role under the proposed arrangement
- Discussion regarding the past role of Murraysmith
- The importance of having a dedicated program manager for these massive projects, given existing staff's lack of capacity
- Note that contracted program management also helps the City manage risk

Moved by Laurie Smallwood, seconded by Carl Exner

Authorize the City Manager to enter into an agreement with Stantec for Program Management professional services in the amount of \$2,320,007.45

CARRIED. 7-0

Ayes: Chris Mayton, Laurie Smallwood, Richard Sheldon,
Kathleen Walker, Carl Exner, Don Hokanson, and Stan
Pulliam

7.3. Economic Development Advisory Board Appointments & Bylaws Amendment

Staff Report - 0631

The **City Recorder** summarized the staff report, which was included in the agenda packet.

Moved by Richard Sheldon, seconded by Chris Mayton

Reappoint board members Khrys Jones, Hans Wipper, Bill Schwartz and Jeremy Pietzold to the Economic Development Advisory Board for new four year terms, and amend the bylaws for this board as recommended in the staff report

CARRIED. 7-0

Ayes: Chris Mayton, Laurie Smallwood, Richard Sheldon,
Kathleen Walker, Carl Exner, Don Hokanson, and Stan
Pulliam

8. Old Business

8.1. Industrial Design Standards Modifications

Second Reading: Ordinance 2023-01

Note: the public hearing for this ordinance was closed at the previous meeting.

Staff Report - 0633

The **Development Services Director** stated that these modifications are intended to assist in the creation of living wage employment opportunities in the community.

Moved by Carl Exner, seconded by Laurie Smallwood

Approve the second reading of Ordinance 2023-01

CARRIED. 6-1

Ayes: Chris Mayton, Laurie Smallwood, Richard Sheldon, Carl Exner, Don Hokanson, and Stan Pulliam

Nays: Kathleen Walker

9. Staff updates

9.1. Department Updates for Council Goal Setting

The **City Manger** provided introductory remarks, noting that these department updates are intended to provide the Council with background information as new Council Goals are developed.

Parks and Recreation

The **Parks and Recreation Director** presented slides, which were included in the agenda packet. Council discussion ensued on the following topics:

- Clarification that Parks provides facility maintenance services across the City organization
- Note that staff are tracking volunteer hours and are now developing a formal volunteer program
- The possibility of tracking the number of unique users of senior services
- Possibilities for establishing non-resident program rates in the interest of cost recovery
- Possibilities for Travel Oregon grant funding
- Need for better public access to school district facilities
- Concerns regarding deferred maintenance of City facilities

Transit

The **Transit Director** presented slides, which were included in the agenda packet. Council discussion ensued on the following topics:

- Clarification on the purpose of transit vans
- Discussion on the causes of reduced ridership; possibilities for a future convenience and safety marketing campaign
- Details on the parameters of grant funding for the upcoming Clackamas Town Center route
- Possibilities for future park and ride funding

(Note: Councilor Exner left the meeting at this point)

Public Works

The **Public Works Director** presented slides, which were included in the agenda packet. Council discussion ensued on the following topics:

- Details on the role of Veolia for water and wastewater services
- Need for progress on speed limit modifications
- Need to make progress on improvements to the Hwy 211 and Dubarko intersection
- Importance of recouping the City's investment into the 362nd / Bell road extension
- Clarification on the City's role in managing streetlights after the LED conversion
- Concern regarding the County's role in managing stormwater
- Discussion regarding smaller water providers who might also participate in project cost sharing
- Need for Federal monetary assistance for lead and copper regulation compliance
- Discussion on the importance of attracting and retaining employees
 - Staffing needs identified in the Public Works Department
 - Council recognition of the importance of adequate compensation to attract needed talent
 - Concerns regarding existing staff capacity and the need to defer some items that are lesser priorities
 - Discussion of whether staffing increases could be considered as part of the upcoming budget process
- Discussion of whether utility rates have accounted for future staffing needs

9.2. [Monthly Reports](#)

10. Report from the City Manager

- Staff has been working with Mr. Leslie on the stormwater concerns he raised
- A quote has been received on a new speed trailer
- Council goal setting will be held on February 18th
- Government relations staff submitted the City's capital funding request for the water system project

11. Committee /Council Reports

Councilor Hokanson

- Thanks to the Council for their support on the Mt. Hood Birth Center issue

Councilor Walker

- The Library Advisory Board received a report on the work accomplished in 2022

- The County will consider whether to provide rent assistance for the Hoodland library location
- Praise for the recent open house event for the Community Campus Park

Councilor Sheldon

- Thanks to staff for their department update presentations

Council President Smallwood

- Thanks to staff for their department update presentations

Councilor Mayton

- The Planning Commission will hear a proposal regarding a new maintenance facility at Johnson RV
- Thoughts on the recent City Day at the Capitol event
- Thanks to staff for their department update presentations

Mayor Pulliam

- Thanks to staff for their City Day at the Capitol efforts
- The Quality Inn homelessness initiative appears to be moving forward
- Mountain Festival plans are beginning to ramp up
- Lake Oswego is experiencing some community complaints regarding pickleball facilities

12. Adjourn



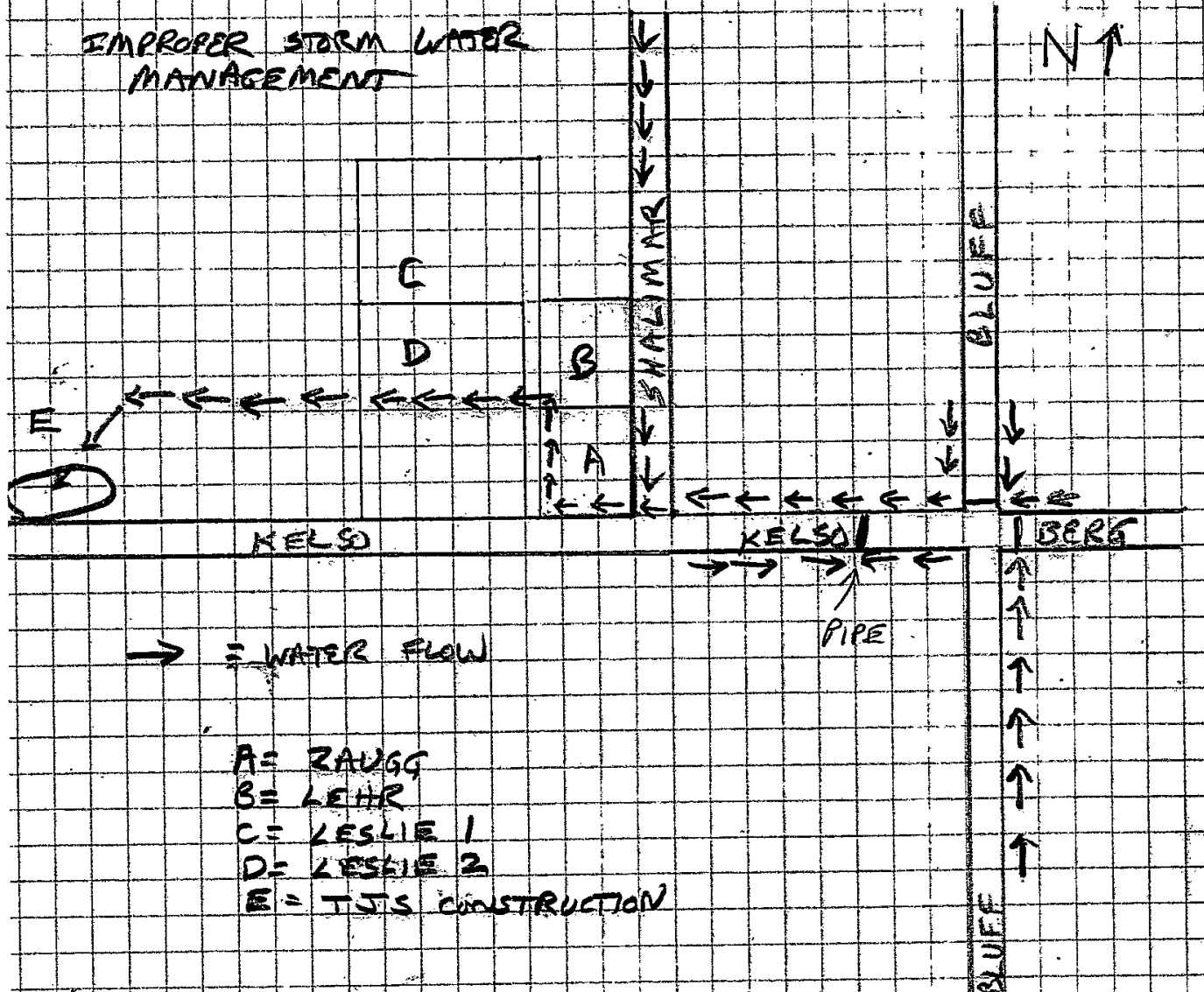
Mayor, Stan Pulliam



City Recorder, Jeff Aprati

BILL LESLIE
37625 SE KELSO RD
SANDY, OR 97055

IMPROPER STORM WATER
MANAGEMENT



- A = RAUGG
- B = LEHR
- C = LESLIE 1
- D = LESLIE 2
- E = TJS'S CONSTRUCTION

William Leslie
37625 SE Kelso Rd.
Sandy, OR 97055
(503) 515-8854
bilboleslie@gmail.com

February 6, 2023

City of Sandy
Attn: City Council
39250 Pioneer Blvd
Sandy, OR 97055

Dear Sirs:

Re: Storm Water Runoff Problems from City of Sandy and Clackamas County Roads

The City of Sandy and Clackamas County are directing stormwater runoff from approximately half a mile of City and County roads across 5 private properties, including two owned by me. Three streets are involved – Kelso Rd., Shalimar Drive, and Berg Lane. More than 500 c.f. of water per minute is being so directed – and the flow may exceed 1,000 c.f. per minute.

This flow is not proper stormwater management, and does not meet acceptable standards under either common law or the Portland Stormwater manual, which has been adopted by the City of Sandy. The huge amounts of water make the affected properties unusable for other use by the property owners. To put this in perspective, I have lost the use of a swatch of my land approximately 40 feet wide X 200 feet long, some 8,000 square feet.

All five of the property owners want their property back.

I have spoken with City and County staff multiple times over the past 10 years regarding these issues. I spoke with Mike Walker before his retirement, and my property was visited by Jordan Wheeler in September, by Jonathan Hangartner in December, and by A.J. Thorne of Clackamas County in December. Clackamas County advised that they won't be involved in any resolution – they defer to the City to address this issue.

For reasons outlined below, the excessive stormwater runoff constitutes a nuisance and trespass which the City and County are required to abate. The City and County's failure to follow recognized standards for stormwater disposal constitutes ongoing negligence in the construction and continuing operation of these roads. The City and County are under a duty to construct facilities to provide for disposal of the excessive stormwater, or respond in damages to the property owners injured by the runoff.

I have conferred with the owners of all five affected properties, and that this matter requires your attention.

- Jay Lehr, of 14401 SE Shalimar Avenue
- Rollin Zaugg, of 14485 SE Shalimar Avenue
- William Leslie 37625 SE Kelso Rd.
- William Leslie, 37611 SE Kelso Rd.
- TJS Construction, which owns undeveloped property, Ttx Lot C201833, State ID 24E02 05300, to the West on Kelso, which property may not have been assigned an address.

The Source of the Problem

Storm water runoff from public roads is being directed across the five privately owned properties noted above. The roads generating such runoff may aggregate to as much as half a mile of paved and gravel roads, including roads for which both the City and County are responsible. Runoff from approximately 1,700 linear feet of Clackamas County roads, including Kelso Rd. and Bluff Rd. Stormwater runoff from City of Sandy Roads, including approximately 750 linear feet of Shalimar Avenue, and from an unknown portion of Berg Lane, is also involved.

The “linear feet” of road understates the problem and the stormwater generated by impervious surfaces. In addition to street runoff, the City and or County has also permitted development of least 19 distinct residential properties adjacent to those roads that are also generating stormwater runoff. Each roof top, paved driveway and sidewalk generates runoff which increases the stormwater runoff across all five properties.

This is illustrated in the sketch attached Exhibit A. The arrows mark the direction of water flow, which no longer follows any natural course of seeping into the ground or gradually percolating west, but collects in catch basins at the base of Shalimar Road that are not sufficient to prevent excessive and unreasonable amounts of water from invading the properties to the west. Kelso has no proper facilities for gathering and diverting stormwater, rather, culverts under Kelso move the water from its natural course off the south side of the road and to the north, and thence west over the affected properties.

It is well established in Oregon law that a landowner, including a city or county, cannot redirect water in a way that changes the quantity of water flowing over a neighbor’s property, or where that water flows. *E.g., Gibson v. Morris*, 270 Or. App. 608, 610 n.1, 348 P.3d 1180, 1181 (2015); *see also* Oregon Dept. of Transportation Hydraulics Manual, Section 2.3 (revised April 2014).

None of the water involved is in natural amounts or flowing naturally. Prior to the paving of Shalimar, Kelso, Bluff, etc., there was no surface flow. All of the ditches and pipes that are delivering water to and across the five properties are man-made. There are no natural watercourses involved in this matter, nor are any of the affected properties wetlands.

In October, 2012. Mr. Walker of the acknowledged that the Shalimar drainage improvements greatly increased both the amount of stormwater runoff, and the speed of delivery of the water. In fact, Mr. Walker was proud when he told me that the addition of two catch basins had eliminated the flooding that had existed on Shalimar. He even sent photos showing the "before and after." His photos prove that water flow had been accelerated, and I believe, that it had been augmented, by the reduced water absorption into the ground along Shalimar.

The negligence of the City and the County here is established by the failure to follow well-established design standards. Indeed, negligence per se is established by violation of the City of Sandy's ordinances. Chapter 13 of the City of Sandy ordinances, Sec. 13.20.010 - Intent and scope states: "...the city... shall have sufficient stormwater management system..." Current City guidelines are that stormwater systems will provide adequate stormwater management from 2 year, 5 year, 10 year, and 25-year frequency storms. Current standards are not being met.

The City has violated its own code. This water is not part of any stormwater management system. Instead, the City and County have looked away from the problem, forcing private property owners to receive and manage a public burden. The City's action is also in contravention of the City of Portland Water Manual, which Sandy has adopted. (City of Sandy Development Code 13.18.90.) The Portland water manual requires that stormwater runoff from public roads should be properly managed. Properly managed does not mean directing the stormwater onto private property owners.

Indeed, standard road design manuals themselves confirm that the courts look with disfavor upon infliction of damage that could be avoided by a prudent designer. (*See Oregon Dept. of Transportation Hydraulics Manual section 2.1, as revised April, 2014.*)

The City and County have made no effort to properly accommodate this stormwater, or even to consider its handling. Although the City paid McLeod-Curran to do engineering, that firm did not address stormwater runoff in any way in their planning and engineering, nor did the City do so at any point. The drawings and design approval are silent on this issue, and City staff was unable to locate any minutes or memos that address the issue of stormwater. In short, the City failed to take any note whatsoever of stormwater runoff issues. This falls far short of "prudent" design

Specific Harms to Property Owners

There have been a wide range of continuing injuries arising from the ongoing water flow. These include the costs of attempting to address the situation. Mr. Zaugg installed, at his own expense, grates and ditches and 97 feet of 10 inch pipe to manage the water on his property. I added an 8 inch pipe under our driveway, in addition to the already present 6 inch pipe. This served to increase the capacity of the pipes by 150%, but the storm water runoff strains the combined capacity of the two pipes, which results in periodic overflows across the driveway.

There is substantial loss of use and personal property. Due to the periodic flow, portions of my property cannot be landscaped or used for growing trees or for farming of any kind, and cannot be used for development until this matter is resolved. I cannot drive across my property

multiple months out of the year. I can no longer farm there, although my property supported ornamental pine trees on that section for many years. The property is too wet for much of the year to even be used for recreation. We recently lost more than a dozen mature trees on our property because they were in standing water. We have done nothing to change slopes or to alter the flow of the water, or to change the drainage in any way.

Most significantly, the City and County's conduct materially and adversely affects the value of development of the land by limiting development options. This property is currently zoned R1. This taking could deprive me of five to eight or more building sites when the property is eventually developed. Even if the property isn't developed soon, as a result of the inverse condemnation, the older farmhouse extant on the property could not be removed, and a replacement dwelling could not be built on as much as 1/3 of the land due to this taking. Mr. Zaugg wanted to install a septic on his property, but was unable to do so because of the excessive water on his property. He was forced to purchase an additional lot across Shalimar, and install a sand filter, at substantial personal expense.

Taking Liability for the City and County

It is well established in Oregon law that the City and County's actions so far are not only causing trespass and nuisance, but also constitute a "taking" of the properties involved. *Vokoun v. City of Lake Oswego*, 335 Or. 19, 28, 56 P.3d 396, 401 (2002). Indeed, the Oregon Constitution explicitly provides that using private lands for drainage is a taking of private land for public use. (Oregon Dept. of Transportation Hydraulics Manual section 2.1 (revised April, 2014).

No particular finding of negligence is required to support takings liability, so long as the water flow was the "ordinary and natural consequence" of the actions of the City and County with regard to these roads. Case law confirms that it is not necessary that the owner of property be actually dispossessed or that the property be completely destroyed in order to constitute a taking within the meaning of the constitutional provisions. Materially decreasing its value is sufficient, and that is easily demonstrated here. *Morrison v. Clackamas Cty.*, 141 Or. 564, 569, 18 P.2d 814, 816 (1933).

Next Steps

We urge you to take this matter seriously and schedule a meeting of all concerned as soon as possible to devise an agreeable plan for resolving these claims. The property owners require that City and County devise a plan for proper stormwater management, so that runoff no longer injures the owners in question. Jewelberry was properly constructed with a storm drainage system running to the south. A pipe running from the Shalimar catch basin(s) along Kelso to connect with that system may well eliminate the problem, and bring the roads into compliance with City and County standards. Alternately, if the Hewitt property to the south is allowed to develop soon, the stormwater could be directed through that development.

Comments from the City suggest that they see a "slowing" of the delivery of water to the affected properties as a solution. Such a change will not help in any way, and will have no value

to the property owners. We still won't be able to use our affected properties. Nor would a partial reduction in the amount of water directed across our properties help – the properties still won't be usable by the property owners.

Sincerely,

A handwritten signature in black ink, appearing to be 'William Leslie', written in a cursive style.

William Leslie