Chronology of Events regarding Phillips Estates Subdivision

1979	Eastern 10 acres of Phillips property annexed into City
10/18/1999	Contract for agreement to annex western 10 acres approved between City and Phillips
10/7/2003	Contract addendum approved, extends agreement until 10/7/2008
8/14/2006	Planning Commission approves subdivision of 64+/- lots on 20 acres; approval contains 13 conditions of approval, one of which requires storm drainage to be conducted to Mill Creek
10/4/2006	3rd Draft Development Agreement sent to Kris Gorsuch (Martinak's attorney) indicating City is ready to sign it. No response received; agreement never executed
2/??/2007	Construction Plans submitted; show subdivision divided into three Phases and storm drainage conducted to Mill Creek
4/16/2008	Stayton Land Use Code amended to require annexation larger than 3 acres be approved by voters
8/4/2008	Construction Plans approved for Phase 1 only
4/14/2009	Subdivision Plat for Phase 1 recorded for first 20 lots on 5.3 acres
Spring 2009	Kinney meets with Ward and Martinak and discusses development agreement for subsequent phases
July, 2009	City hires Emery and Son Construction to extend storm water from Quail Run to JCNW property
8/3/2009	Email from Martinak to Fleishman regarding extending contract for annexation
8/4/2009	Email from Fleishman to Martinak suggesting Martinak send letter asking City to extend contract
1/1/2010	New Stayton City Charter requires that annexations larger than 1 acre be approved by voters
8/12/2010	Fleishman and Kinney meet with Ward and Martinak to discuss status of development agreement and annexation. City staff suggests Martinak send City a letter explaining circumstances and that annexation contract should be considered in place.
12/7/2011	Letter from Fleishman to Martinak stating contract annexation expired; annexation of west half must be approved by voters.
6/6/2012	Martinak submits revised Development Agreement to Eubank
6/18/2012	City Council initiates annexation proceedings
8/7/2012	Eubank responds to Martinak regarding draft revised Development Agreement
8/20/2012	City Council refers annexation to voters
9/11/2012	Santiam Water Control District files Notice of Intent to Appeal Annexation with Land Use Board of Appeals
11/6/2012	Voters approve annexation
1/11/2013	SWCD and Martinak reach agreement that results in withdraw of LUBA appeal; Agreement states no additional impervious surface without a storm drain system to Mill Creek
1/22/2013	City Council enacts ordinance finalizing annexation

3/20/2013	Martinak submits application for revising conditions of 2006 Planning Commission approval
4/2/2013	Stayton and Martinak teams meet to discuss terms of Development Agreement.
4/8/2013	Stayton and Martinak teams meet to discuss terms of Development agreement.
4/16/2013	Lance Graves from Emery & Sons construction attends City Council Meeting requesting the Council set a work session to work on the terms of a Development Agreement for Mr. Martinak.
4/24/2014	Both teams meet at Wally Lien's office to review City's proposed Final agreement.
4/29/2013	Proposed final agreement sent to Martinak team for review.
4/29/2013	Planning Commission approves application for revised conditions of approval
5/15/2013	Revised Final agreement sent to the Martinak team.
6/3/2013	City Council reviews and approves final Development Agreement.
6/6/2013	Developer-City Construction Agreement signed by Martinak and City; agreement spells out terms for proceeding with Phase 2 and Phase 3; basis of reimbursement to Martinak for cost of oversizing facilities, contains dispute resolution clauses calling for mediation and arbitration
6/25/2013	A Carlson Geotechnical Reports is sent to Bill Martinak and Steve Ward. The Geotechnical report indicates that three test pits where dug in the location of the proposed stormwater pond. The test showed "no discernible" water infiltration. Mr. Martinak terminated the test early. The groundwater level was noted at 3.25 to 4.0 feet. No attempts were made to determine seasonal high level ground water.
6/28/2013	Steve Ward, Mr. Martinak's engineer sends an email to Bill Martinak that states that, *"This report (Carlson Report dated 6/25/2013) is extremely damaging to our cause. If I were the City, I would not allow additional development without the new S(torm)D(rainage) outlet to Mill Creek. There is nothing in this report I can use to satisfy the City."*
7/9/2013	Phase 2 construction plans submitted for review. The construction plans indicate that the stormwater pond will have an infiltration rate of 4.1 inches per hour. .
7/10/2013	Carlson Geotechnical witnesses a second perk test that is administered by Bill Martinak and Steve Ward. This test is in a pit location that was chosen by Mr. Martinak and is most likely located outside of the proposed area for the stormwater pond. Mr. Martinak tells Carlson that the groundwater is 6 to 8 feet below the surface. The test pit testing shows an infiltration of 4 1/8 inches per hour. Carlson recommends that, *"the infiltration system design (provided by others) and locations be reviewed by (Carlson)."* .
7/17/2013	City Engineer memo states Phase 2 construction plans incomplete
7/24/2013	Revised Phase 2 construction plans submitted
8/1/2013	City Engineer review memo on revised Phase 2 construction plans
8/8/2013	Preconstruction Meeting
8/16/2013	Third draft of Phase 2 construction plans submitted; Steve Ward tells Brash and Kinney that work would start on Monday 8/19 regardless of lack of City approval
8/19/2013	Start of construction. Plans have not been approved by City.
8/22/2013	City Engineer review memo on third draft Phase 2 construction plans
9/5/2013	Fourth draft of Phase 2 construction plans submitted

9/11/2013	City Engineer review memo on fourth draft Phase 2 construction plans – issues remaining to be resolved include stormwater basin design grade issues
10/30/2013	First punch list of outstanding construction items. This list was periodically updated from then on.
11/26/2013	Unofficial substantial completion, based on retention of funds from reimbursement to cover cost of remaining punch list items
Fall/Dec. '13	In depositions taken in the spring of 2015 both Bill Martinak and Steve Ward acknowledge that the Fall/December 2013 they knew the pond wasn't going to work as designed. This information is not shared with the City until arbitration.
4/29/2014	Plat for Phase 2 for lots 21-46 on 7 acres approved by City
5/8/2014	Kinney, Fleishman, Campbell, & Ashley meet with Martinak to discuss Phase 3. City notifies Mr. Martinak about concerns of the functionality of the stormwater pond on Phillips Estates
5/9/2014	Email from Ashley to Martinak spelling out City's concerns with stormwater pond and need for analysis prior to submitting Phase 3 construction drawings
Late Spring	Bill Martinak meets with Keith Campbell in an attempt to get the City to withdraw their request for additional testing of the stormwater pond. Mr. Martinak claims that it is unnecessarily expense and burdensome. Mr. Campbell asks why Mr. Martinak just won't do the tests. Mr. Martinak acknowledges that the stormwater pond, "is not drawing like we thought it would."
9/23/2014	Campbell, Brash, Shaffer, Ashley meet with Martinak and Ward to discuss the hydrology study for the retention pond as per the submitted engineer design plans, and to discuss reimbursement. Steve Ward deflects questions on the functioning of the pond and challenges the City to prove the pond isn't working as designed.
9/30/2014	Ashley points out that the submitted engineered design plans and as-builds for the retention pond are different, in that as-builds show a 10" discharge pipe that was not included on the submitted engineered design plans and the stormwater basin was constructed substantially larger than designed
10/17/2014	Campbell meets with Martinak. Martinak acknowledges that the initial retention design will not work and that the current stormwater pond may not be sufficient.
10/20/2014	Executive Session with City Council to discuss possible Stop Work Order
10/21/2014	Stop Work Order is issued
10/24/2014	Phone conference with Campbell, Lien, Shaffer, Fleishman, Brash, and Martinak and Loiselle to discuss how to proceed with pond failure and the Stop Work Order.
10/24/2014	Response from Martinak's attorney (Loiselle) saying they will schedule "expedited set of meetings" to "occur in the next two weeks" in order to get the SWO lifted
10/27/2014	Response from City to Martinak indicating the City would agree to meet in a day or two of the response.
10/28/2014	Phone conference with Campbell, Lien, Shaffer, Fleishman, Brash, and Martinak and Loiselle
10/28/2014	Response from Loiselle saying he would set a meeting for attorneys and engineers for two weeks from now

10/29/2014	Response from Lien to Loiselle, that City would cooperate in setting a "timely schedule" for meetings to resolve the issues
10/30/2014	City meets with Erdmann (HBA) and Frost (JDC Homes) to remove the stop work order from homes currently under construction
11/3/2014	Loiselle response to WWL letter of 10/29 indicating that dispute resolution is by the ASP, and invites the City to follow the "formal path" set out in the Development Agreement
11/3/2014	Martinak appears at City Council meeting; submits letter that says the City should "Invoke the arbitration clause ... and start with optional mediation." City Council modifies Stop Work Order to allow construction to continue where permits had been issued, but no new permits.
11/3/2014	Martinak submits construction plans for Phase 3
11/3/2014	City is notified that as an “act of good faith” JCNW has plugged the 10” outflow pipe which is dumping water on private property without an easement and in violation of the agreement Mr. Martinak has with the Water Control District. The pipe was not included on construction plans submitted to the City, but were included in the As-Built plans.
11/4/2014	Fleishman emails Martinak explaining that Phase 3 plans would not be accepted or reviewed; asks Martinak to pick up plans
11/5/2014	City sends letter to Loiselle asking for confirmation that they want to end negotiations and go through dispute resolution
11/5/2014	Doug Harner with JDC Homes submits application for a building permit for Phillips Estates
11/6/2014	Rhoten letter to Loiselle cautioning the developer to avoid ex-parte contact with the Governing Body
11/11/2014	Election Day
11/12/2014	City formally requests mediation, suggesting mediators and offering a first session for last week in November or first week in December for a first session.
11/12/2014	City modifies the Stop Work Order to allow construction of lots that have an existing building permit
11/13/2014	City staff sends Phase 3 plans back to Martinak via Federal Express
11/17/2014	Martinak resubmitted Phase 3 plans with a copy of the Stayton Municipal Code
11/19/2014	City sends Loiselle letter with the chronology of the City detailing the requirements that need to be met before Phase 3 plans can be submitted. City returns Phase 3 Construction Plans to Martinak
11/20/2014	Martinak resubmits Phase 3 Construction Plans and submits a building permit application on behalf of Emery & Sons
11/21/2014	Phase 3 Construction Plans are returned to Loiselle
11/21/2014	Loiselle accepts the City’s “demand’ for mediation and requests more time for an appropriate response.
11/25/2014	City notes that the outflow pipe in the pond is submerged
11/28/2014	City staff discovers the pond is significantly overtopping the weir after only minor rains, a situation that continues almost all winter.
12/1/2014	Martinak submits seven new building permit applications for Phillips Estates on behalf of Emery & Sons

12/3/2014	Plans are returned from the County for the 11/5/2014 building permit
12/5/2014	Plans are returned from the County for the 11/20/2014 building permit
12/9/2014	Email from Loiselle stating that mediation in January may be suitable.
12/9/ 2014	Loiselle email to Lien saying Judge Pedersen is fine and asking for "a date in January"
12/9/2014	Lien email to Loiselle expressing frustration that it has been over a month without any meetings to discuss resolution of the pond problem, and offering to meet any day next week. Advising that if meetings can not occur the City will take an alternative route (i.e. arbitration)
12/18/2014	After having received nothing from Loiselle by way of setting dates or selection of mediator or willingness to meet at all, City files Statement of Claim which follows the Development Agreement and the assertions of both Martinak and Loiselle
12/24/2014	Email from Loiselle to Lien indicating they were making "efforts to formally schedule mediation", and saying they will now agree to meet provided the Mayor is present
12/24/2014	Lien email to Loiselle indicating the City does not feel the developer has acted in good faith with regard to scheduling and that the City will file the Statement of Claim to ensure the process moves forward and again offering to meet and asking them to set a day and time
12/24/2014	Loiselle email response saying they are still considering meeting informally before going to mediation, and indicates that "they cannot negotiate with you" and demand mediation pursuant to the Development Agreement and threatens to contact ASP
12/24/2014	Lien email response to Loiselle saying since they cannot negotiate with us, mediation would be meaningless
12/26/2014	Loiselle email to Lien saying they are confident the matter can be resolved if all the Council is present
12/26/2014	Lien responds that the City will proceed with the Arbitration process as per the Statement of Claim
12/26/2014	Loiselle response to Lien arguing that JCNW never waived its right to mediation
12/26/2014	Lien response that the facts will speak for themselves and that the City intends to proceed with the ASP process as per the Statement of Claim
12/26/2014	Loiselle response saying they are going to "enforce its contract" and that he is going to file something on Monday (ASP rules say no motions until an arbitrator is appointed)
12/26/2014	ASP opens the case file and sends out proposed arbitrators
12/29/2014	Lien returns arbitrator selection sheets to ASP
1/5/2015	New Mayor and Council are sworn in and take office and participate in their first meeting
1/5/2015	Loiselle letter to ASP asserting mediation is condition precedent and demands mediation
1/6/2015	ASP letter to Loiselle indicating that there are no rulings that find mediation is a condition or precedent. ASP provides information for requesting mediation through the ASP process, a suggestion that Mr. Loiselle never act upon. ASP

	notes, "…that making mediation a legal condition precedent could be used unfairly as a delay tactic by a party who has no intention of settling or of participating in good faith settlement discussions."
2/3/2015	Mr. Marinak's attorney files a tort claim against the City on behalf of Emery and Sons, a company is owned by Mr. Martinak.
2/3/2015	Mr. Marinak's attorney files a tort claim against the City on behalf of JDC Homes, a company for which Mr. Martinak has a financial investment.
5/11-14/15	Arbitration Hearing
6/9/2015	Preliminary Award is filed. Arbitrator confirms all of the City's Claims, denies all of JCNW Family LLC counter claims, upholds the validity of the issuance of the Stop Work Order as, "justified considering the circumstances", rules that the stormwater facility was not properly engineered and was not built to standards, does not meet the design of zero discharge, that JCNW Family LLC is in breach of sections 1,3,10 of the Development agreement for the parties, the City is entitled to reimbursements for all reasonable legal fees.
8/12/2015	Final Award issued.
9/1/2015	Tort claim filed by Emery and Sons is dismissed
9/1/2015	Tort claim filed by JDC Homes is dismissed
10/1/2015	Final Award filed in Marion County Court