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VIA EMAIL

Yamhill County Planning Commission
C/o Stephanie Armstrong, Dept. of Planning & Development
525 NE 4th Street
McMinnville, OR 97128

Re: Dockets R-01-18 and R-02-18.

Dear Members of the Planning Commission:

This letter is the applicant's final argument, and is submitted pursuant to ORS 197.763(6) and the schedule specified by the Planning Commission at the March 7, 2019 public hearing. This letter has two parts. In Section I, we address what we believe are the key issues in this case. In Section II, we address some of the main issues raised by the opponents at the hearing or in their post-hearing submittals.

SECTION I: KEY LEGAL ISSUES PRESENTED IN THIS CASE.

1. Lot Size Averaging.

Mr. Edwin Sharer testified that the hearing that he discussed the proposed lot size averaging interpretation with staff, and that staff agreed that the applicant's proposed interpretation is consistent with the County's long-held practice. The applicant would have never proceeded with these applications without staff support, and it important that staff gave the applicant the green light to proceed with formal application submittals.

There is a reason that the County has interpreted the lot size average provision in this way: it ensures that VLDR lands are used as efficiently as possible. In furtherance of this goal, we first wish to point out two important policy points that should help the Planning Commission understand why it is important to use lot size averaging in a manner which maximizes the efficiency of the VLDR zones.

First, it is important to note that rural residential land is not farm or forest land – and the entire reason that this land was zoned for rural residential uses in the first place was that these lands were deemed by the State and County to be no longer suitable for farm or forest uses.

Second, because state law makes it impossible to rezone resource land (i.e. land zoned EFU or Forest) to rural residential land, the amount of rural residential land is a finite resource in the County. For this reason, County policy should be to use the existing limited supply of rural residential land as efficiently as possible, and that, in turn, means ensuring that the "realized density" in any district comes as close as possible to the density goal, which in this case is an average of 5-acre lots.

We discuss both of these issues below.

a. The Land in Question is Exception Land, Which Has Been Determined by the County to be Unsuitable for Farm and Forest Use, Consistent with State Law.

Woodland Heights was platted in 1970, prior to the modern zoning paradigm which began in 1973 with the adoption of SB-100 and continued with the adoption of Statewide Planning Goals in 1975. When Yamhill County first implemented the statewide planning goals in the 1976, it sought to protect farmland and forestland in large blocks through minimum lot sizes of 20, 40, and 80 acres. On the other hand, the County realized that the land comprising existing subdivisions (such as Woodland Heights) were no longer suitable for farming or forestry use as a primary use of land. For this reason, the County took an "exception" to Statewide Planning Goals 3 and 4 for Woodland Heights. As a result of this exception, the state allowed Yamhill County to zone the property for a rural residential use.

What exactly is an "Exception"? Put in layperson terms,[1] an exception is conceptually similar to a variance. *1000 Friends of Oregon v. Jackson County*, 292 Or App 173, 176, 423 P3d 796 (2018), *rev. granted in part* __ Or __ (2018) ("An 'exception' is a variance to the requirements of a statewide planning goal."). In *Land Conservation and Dev. Com'n*, 731 P2d 1015 (1987), the Oregon Supreme Court described an exception as:

> " * * * essentially a variance that allows state land use goal requirements to be waived where, for some compelling reason, it is 'not possible to apply the appropriate goal to specific properties or situations.' "

Id. at 1018 n.3. This is how DLCD describes the exceptions process:

[1] For the formal answer, we look to ORS 197.732(1)(b), which defines an "exception" as a "comprehensive plan provision * * * that * * * [i]s applicable to specific properties or situations," that "[d]oes not comply with some or all goal requirements applicable to the subject properties or situations," and that complies with the exception standards in ORS 197.732(2). An exception may be "taken" or "applied" when a statewide goal cannot or should not be applied to a particular area or situation. An exception is permitted to resource goals, including Goals 3 and 4. OAR 660-004-0010(1); *Perkins v. City of Rajneeshpuram*, 300 Or 1, 706 P2d 949, 953 (1985); *1000 Friends of Oregon v. Land Conservation and Dev. Com'n*, 292 Or 735, 642 P2d 1158, 1162 (1982).

> "Rural land that has physical properties that make it suitable for farm or forest use is generally required to be planned and zoned for those resource uses. In some cases, a county may approve an "exception" to Statewide Planning Goal 3, Agricultural Lands, and/or Goal 4, Forest Lands, to zone land for other uses.
> The most common reason for "taking an exception" is that the land is "physically developed" or "irrevocably committed" to non-farm and non-forest uses. Think of a rural residential neighborhood or a crossroads store that existed before the statewide planning goals took effect. If an area is shown to be committed to non-resource use, infill development is permitted at a rural scale. Outward expansion of development would require a new exception. Zoning of these exception areas must limit uses to those that are the same as existing uses (for example, commercial zoning for a store) or compatible rural uses." (Underline added).

https://www.oregon.gov/lcd/RP/Pages/index.aspx. Of course, that exactly describes the situation we are faced with here: by the time the County zoned Woodland Heights, it was already plated and "physically built and/or committed" so that it was no longer considered useful for "resource" use (*i.e.* farming or forestry). The County recognized that this land was still useful for rural residential usage and for so-called "hobby farms" as an accessory use. Here, the applicant proposes exactly the type of infill development envisioned by DLCD.

The important thing to understand is that the supply of VDLR-5 land is both limited and finite: barring unforeseen circumstances such as drastic changes in the land use program, the use of "physically developed" or "irrevocably committed' exceptions to create rural residential land was, as a practical matter, a one-time deal. Given current Oregon land use laws, it is simply not possible, as a practical matter, to convert lands currently zoned for resource use to rural residence use via an exceptions process. This is because the legal standards for exceptions are impossible to meet if the application seeks merely to create rural residential land.

Given the fact that rural residential land is a finite and limited resource, such land should be used as efficiency as possible, and that includes ensuring that the *realized* density of such land is as close as possible to the *planned* density (which in this case is an average of 5 acres).

b. This Application Can Be Approved Via Lot Size Averaging Because the County's Goal is to Use Land As Efficiently as Possible.

Lot size averaging is an approach to subdividing land that allows a parcel of land to be divided into unequally-sized lots as long as the average of all the lot sizes remains equal to or above the minimum zoned lot size. When used in a rural context, lot size averaging can serve a variety of different objectives and further principles of land management, including:

- ensures that exception areas are developed efficiently and as close as possible to the planned density,

- ❖ creates additional buildable lots within existing single-family residential areas, which will increase more affordable home ownership opportunities without requiring new public facilities, and

- ❖ enables a range of lifestyle choice, including smaller rural living allotments.

- ❖ discourages further fragmentation of valuable agricultural land by offering alternative sites for housing and flexibility of housing placement,

- ❖ protects environmentally sensitive land from uses that threaten ecological integrity,

In this case, the first and second of these five bullets are particularly applicable: lot size averaging allows more efficient use of the limited and irreplaceable supply VLDR-5 zoned land, and adds additional units to the zone that might not otherwise be realized. It also adds variety to the existing neighborhood and provides different sized home choices.

The common meaning of the term "average" is found in Webster's dictionary. It is defined, in relevant part as '(1) the numerical result obtained by dividing the sum of two or more quantities by the number of properties; an arithmetic mean.' Lot size averaging is, therefore, a method used to ensure that as many lots are created from the VLDR-5 District as is legally possible while still maintaining an *average* lot size of 5-acre and a *minimum* lot size of 2.5 acres. The opponent's interpretation results in less efficient use of land because it does not result in the creation of the most number of lots that can legally be realized in this zone, thereby making less rural residential opportunities available to the residents of Yamhill County. In short, it protects the few at the expense of others who may seek out the rural residential lifestyle on Yamhill County but will not be able to do so do to the limited supply of land.

Some of the opponents have argued that the County's long-standing interpretation of "lot size averaging" effectively takes density that "belongs" to existing landowners in the District and gives it to developers. This is a curious and non-sensical argument, since it is not legally possible to "own" or "possess" density. Density is purely a land use planning concept, and all land use planning is by its very nature in derogation of property rights.

For the Planning Commission, the policy question boils down to this: in light of the fact that State of Oregon limited the amount of rural residential land that can be created, do you want to use that land as efficiently as possible by creating as many lots and parcels as legally possible? Or, do you leave that allowed density on the table, so to speak, in order to reward a select few at the expense of others?

At the end of the day, the opponents offer no compelling argument or policy basis why the County should dispense with its long-standing interpretation of lot size averaging. As far as we can tell, the opponents simply don't want anybody else to have what they have. With a world population that is rapidly increasing and immigrants coming to the USA by the millions, it is simply not going to be possible to sustain such exclusionary thinking over the long term.

c. Yamhill County Has a Long-Standing History of Using "Lot Size Averaging" in the Manner Proposed by the Applicant.

One of the opponents stated that the applicant failed 'to point to any binding precedent regarding the use of other's property by a private applicant in similar situations." To be clear, no quasi-judicial decision is "binding" in any legal sense, so the opponent's argument is a strawman. However, as staff pointed out at the hearing, there is a well-established and long-standing pattern and practice of the County interpreting the "lot size averaging" provision set forth at YCZO 502.06(A)(1)(c) in a manner that supports the approval of the two applications currently before the planning Commission. We reached out to former Planning Director Mike Brandt, and he stated that the applicant's understanding of the lot size averaging provision is consistent with how things were handled when he was employed by the County.

At the hearing, we provided a good example of this pattern and practice, when former Planning Director Mike Brandt's wife was the applicant and successfully partitioned a 4.1-acre property in the VLDR 2.5 zone into two parcels, which ended up being recorded at 1.8 acres and 2.3 acres, respectively. Mr. Brandt's land use application relied on the fact that the parent lot was originally ten (10) acres and that only 4-lots would ultimately be created by the serial partitions. In short, Mr. Brandt used excess density from his neighbor's lot to

After the hearing, the Planning Director Ken Friday submitted a memorandum dated March 14, 2109 in which he states that he researched the issue of lot size averaging. He stated that he found two other examples of the County's pattern and practice of using lot size averaging in a manner that supports and approval in this case. Please understand that Mr. Friday's research – though helpful - is incomplete, and does not represent the sum-total of examples where lot size averaging has been used. Researching this issue is tedious and time consuming, and we while we were able to uncover additional examples, we believe that other examples remain to be discovered.

In the first of these two applications uncovered by staff, Docket P-20-86, Harvey Nelson successfully partitioned a 3.9-acre parcel into a 2.53-acre parcel and a 1.4-acre parcel. (Now T4S, R5W, Sec 11, TL 4000 and 4001). Under the Beck Landing's understanding of how lot size averaging works, the Nelson application should have been denied unless there had remained excess available density in the applicable district. Nonetheless, staff approved the Nelson application using a much more aggressive interpretation than we seek in this case.

In the second application uncovered by staff, Docket P-21-96, staff supported the approval of an application by J.D. and Edith Pierce to partition 2.39-acre parcel in the VLDR-2.5 zone to two parcels (1- acre and 1.39 acre respectively). Mr. Friday notes in his memorandum that there was a significant amount of opposition to the application, and that Mr. and Mrs. Pierce ultimately withdrew the application for unknown reasons.

Despite that temporary setback for the Pierce family, J.D. and Edith continued to use lot size averaging – *with express County approval* - to effectuate serial partitions of their property. In fact, they used lot size averaging to further divide a parcel located next door to the 2.39-acre property discussed above. For example, between 1990 and 2004, the Pierce family and a

successor property owner, Larry Bohnsack, used lot size averaging and serial partitions to divide the 13.89 acre parcel into six (6) parcels, when only 5 parcels should have been approved had there not been reliance on a 30-acre "grandparent" lot:

- Docket No. P-37-90 (Partition Plat 90-55) (13.89 acres split into 3 parcels).
- Docket No. P-16-92 (Partition Plat 93-07) (7.06 acres split into 3 parcels).
- Docket No.P-25-96 (Partition Plat 2014-14) (5.01 acres split into 2 parcels).

Between 1994 and 2005, the Pierce Family partitioned another 12.5-acre parcel into six (6) parcels via a set of serial partitions:

- Docket No. P-01-94 (Partition plat 95-19) (12.5 acres approved for three-parcel split but only split into 2 parcels).
- Docket No. P-16-99 (Partition plat 2001-13) (9.69-acre remainder split into three parcels.
- Docket No. P-01-05 (Partition plat 2006-07) (8.52 acre remainder further split into three parcels).

The Pierce family was also able to turn a third 10-acre property into six (6) lots via another set of serial partitions:

- Docket No. P-32-93 (Partition plat 94-09) (10.5 acres split into 3 parcels) .
- Docket No. P-30-97 (Partition plat 98-31) (7.8-acre remainder split into 3 parcels.
- Docket No. P-02-05 (Partition plat 2006-21) (4.48- acre remainder split into 2 parcels).

In all three cases, the Pierce family was able to use lot size averaging of a much larger district to achieve lot sizes that are much smaller than is allowed in the VLDR 2.5 zone. It is also worth noting that at least one case, Docket P-01-05, staff actually waived a condition of approval, set forth in the previous partition, which prohibited further partitioning of the oversized remainder parcel resulting from the use of lot size averaging. This goes far beyond anything the applicant seeks in this case. In fact, in both cases, staff allowed the Pierce family to partition their land beyond what lot size averaging should have allowed under even the most broad reading of the ordinance.

One final point is worth mentioning: at the hearing, we noted that the 387 acres of Woodland Heights could be theoretically be developed with 77 five-acre lots. The original plat contained 65 lots, leaving the potential for 12 more lots. In the staff report, staff notes that 15.73 acres of road ROW should be first be subtracted out from the 387 acres prior to dividing by 5. This would result in the calculation of $371.5 \div 5 = 74$ lots (vs 77). Although we do not believe that the Code demands that the Planning Commission first remove ROW from the calculation, *there is no consequence to these two applications* by doing so, and we don't oppose that approach. Nonetheless, we note that our review of previous plats, including the Pierce plats discussed above, reveals that this extra step of removing ROW acreage has generally not been applied in the cases we reviewed.

2. Feasibility of Alternative Access for Lots 1 & 2.

In our application narratives submitted on February 29 (Lots 1 &2) and March 1 (Lots 26 & 27), we explained why the two applications met County standards set forth at YCZO 6.010(6), (7) & (8). To recap, the standards only allow three dwellings to be served by a private easement owned by the road association. In this case, the applicant seeks to allow proposed lots 2-4 of the Replat of Lots 1& 2 to be served by the so-called "Woodland Heights East" road, which is the paved road that was vacated in 2006. Two of these three proposed lots "abut" the vacated ROW; while the third lot – proposed lot 4, would be served by a 30-foot wide easement. The remaining lot (Proposed Lot 1) would take direct access from Star Quarry Road.

With regard to the Replat of lots 26 & 27, we have proposed improving the public ROW that fronts lots 26 – 29 so that there is 20-foot wide hard surface road capable of meeting the Uniform Fire Code standards. Stated another way, we are *not* relying on the use of the vacated ROW currently owned by the road association in order to gain approval of this replat.

There was no evidence submitted into the record that suggest that either of the proposals set forth above are not feasible.

While we are confident in the correctness of our analysis, we have also taken the extra step to show an alternative plan that does not rely on the use of the vacated ROW currently owned by the road association. We have submitted evidence into the record showing that it is possible for us to develop the existing Lots 1 & 2 into four separate lots, all of which would take direct access from Star Quarry Road.

3. Feasibility of Serving the Proposed Lots with Water, Septic Systems, and Storm Drainage.

The applicant submitted unrebutted expert testimony from Jonathan Smith, P.E. of Cascade Water Works, Inc., which concludes that the local aquifers in the area are not being depleted, that the wells are recovering to the same static water level year after year, and that most of variation of water levels can be attributed to seasonal changes in water usage. At the hearing, at least one opponent admitted to using water to irrigate crops, which violates state law for this area. We suspect that most of the seasonal variation comes about from exempt uses exceeding their lawful allotment of water of 15,000 gal./day.

The applicant also submitted unrebutted expert testimony by septic system contractor Mr. Terry Vandegrift concerning the feasibility of installing individual septic systems on each of the 8 new proposed lots created from 4 existing lots. Mr. Vandegrift is very familiar with the area, and after visiting the site, he concluded in his letter that there are no impediments to installing and operating septic systems in the soils found on the subject properties. The opponents submitted no evidence to the contrary.

The applicant also submitted a Preliminary Storm Drainage analysis from Willian Kehrli, P.E. of CWK2 Land Development Consultants. This analysis concluded that that were

engineering solutions to any storm drainage issue that may encountered on Lots 1, 2, 26 and 27, and therefore, any storm drainage issue discussed by opponents will be dealt with in due course.

Finally, the applicant submitted expert testimony from Randy Cunningham of Devser, Inc. that demonstrated that the "wet" area found on lot 1 is not a jurisdictional wetland. It was determined that the area is wet because of a trespass of water from the Woodland Heights vacated ROW, and the applicant plans on rerouting that water within the ROW so that it flows around lot 1. As with the other expert testimony, the opponents offered no evidence to rebut Mr. Cunningham's conclusions.

SECTION II: ISSUES RAISED BY OPPONENTS

1. The Purpose Statement of the VLDR District Is Not An Approval Standard.

Many of the opponents quoted from YCZO 502.01, which is the purpose section of the VLDR zone, to support various arguments they made to the Planning Commission. One witness went so far as to say that she was a lawyer and that she was "comfortable" litigating the issue of whether YCZO 502.01 was a mandatory requirement. However, as we pointed out at the hearing, the issue of whether YCZO 502.01 is an approval standard for a quasi-judicial land use decision *has already been litigated*. In fact, the *exact* same argument made by the opponents in this case was raised and rejected in *Reeves v. Yamhill County*, 28 Or LUBA 123, 127-8 (1994). Since the ruling in *Reeves* is dispositive on the issue and binding on the Planning Commission, the relevant discussion from that case is set forth in full below:

> YCZO Section 502 establishes the county's three Very Low Density Residential Districts (VLDR-5, VLDR-2 1/2, VLDR-1). YCZO 502.01 (Purpose) provides, in relevant part:
>
> "The purpose of the VLDR Districts is to provide for medium-to-high density rural residential development on selected lands identified as Very Low Density Residential in the Comprehensive Plan. * * * Ultimate density limitations in VLDR Districts shall be determined in part by prevailing lot sizes, and limitations of domestic water sources or soil conditions for subsurface sewage disposal. * * *" (Emphasis added.)
>
> Petitioner contends the challenged decision fails to demonstrate that placing a dwelling on the subject 1.7-acre parcel is consistent with the purpose of the VLDR zones. Petitioner specifically argues the county failed to address the provision of YCZO 502.01 requiring that the ultimate density allowed in the VLDR-2 1/2 zone be determined based on limitations on domestic water sources and subsurface sewage disposal, as well as existing lot sizes.
>
> The challenged decision explains the county's interpretation of YCZO 502.01:

> "The Statement of Purpose in YCZO Section 502.01 is a very generalized statement for that entire section of the [YCZO], and does not include site specific approval standards and criteria. The more specific approval criteria and standards appear in other sections of [YCZO] 502 (see, e.g. [YCZO] 502.06), and would override any purported regulation in YCZO Section 502.01."

Record 14.

YCZO 502.06 (Standards and Limitations), cited in the above finding, establishes dwelling density, parcel size, parcel dimension and setback standards for each of the three VLDR zones.

This Board is required to defer to a local governing body's interpretation of its own enactment, unless that interpretation is contrary to the express words, purpose or policy of the local enactment or to a state statute, statewide planning goal or administrative rule which the local enactment implements. ORS 197.829; *Gage v. City of Portland*, 319 Or 308, 316-17, 877 P2d 1187 (1994); *Clark v. Jackson County*, 313 Or 508, 514-15, 836 P2d 710 (1992). The county's interpretation of YCZO 502.01 as a generalized purpose statement for all three VLDR zones that is implemented by other provisions in YCZO Section 502, and as not including approval standards for individual permit applications in the VLDR-2 1/2 zone, is well within the discretion afforded the county by ORS 197.829, Gage and Clark.

This sub-assignment of error is denied.

See also Wissusik v. Yamhill County, 20 Or LUBA 246 (1990) (Determining that the purpose statement set forth at YCZO 403.01 is not an approval standard). Given that the Board of Commissioners has already spoken on the exact issue raised by the opponents, the Planning Commission has no authority to vary from the Board's interpretation.

2. Confusion Over the Status of Road ROW: The Public ROW in Woodland Heights is Privately Maintained.

Mr. Craig West wrote a letter dated March 11, 2019 in which he demonstrates an understandable degree of confusion pertaining to the differences between a "private" road and a "public" road. His confusion primarily stems from the fact that he wrongfully equates public *ownership* with public *maintenance*.

A public road is a road that everyone has a right to use and which is a matter of legal, public record. Yamhill County has a type of public road which it calls a "county road." A county road is a public road which has come under the jurisdiction and control of the County for maintenance. To become a "county road," formal action of the Board of County Commissioners is required, and the road first has to meet certain right-of-way width standards and must be brought up to minimum roadway standards. When a road has been accepted into the Yamhill County road system, the Public Works Department has responsibility for maintaining the road, setting standards and specifications for road work, and administering permits for any work within the right-of-way.

Aside from these so-called "county roads," there are also other types of public roads in Yamhill County. The degree of county maintenance responsibility depends on the status of the road, applicable state law, county laws and county policies. As the Yamhill County Road Department notes, there is a category of public road - known as a "local access road" - that is publicly owned but privately maintained:

> There are two types of public roads. The first type is a road that has been dedicated by deed or subdivision plat to the public. This type of public road was not accepted by the county for maintenance and is therefore maintenance is usually done by the adjoining property owners. The second type of public road has a specific action by the Board of County Commissioners accepting the road for county maintenance [*i.e.* a "county road"].

Woodland Heights West is a local access road: it is a right-of-way that has been dedicated to the general public. However, the County has no responsibility to maintain the traveled roadway. Historically, by default, local landowners have taken primary responsibility for maintenance of these types of roads.

For this reason, Mr. West's arguments provide no reason for denial of this replat application.

3. Removal of So-called "Barrier Trees" in the Vacated ROW owned by the Road Association.

At the both the public hearing and in a post-hearing written submittal, the Planning Commission heard a complaint alleging that that Beck's Landing LCC had removed some of the trees from the vacated ROW that had previously prevented cars from going over a steep cliff during icy weather. Our response is three-fold:

1. <u>No Relevance to Approval Criteria.</u> This issue has no relation to an approval criterion and is therefore irrelevant to the task at hand.

2. <u>The Ownership of Trees in ROW Remains with the Property Owners.</u> Becks Landing owns the trees in the vacated ROW that front its land. A fee title owner of property owns not only the land, but everything below, on, or in the reasonable airspace above

the land, including trees or other natural growth. By granting a public right of way, the owner is giving an easement to the public across their land for specific uses, but retains ownership of the land. Because of the extent of the easement, this is often referred to as the "underlying fee ownership."

When the roadway was first dedicated to the County in 1970, the County obtained only a right-of-way easement, not title in fee simple. ORS 92.010(11); 92.150; *Huddleston v. Eugene*, 34 Or 343, 35 P 868 (1899); *McCoy v. Thompson*, 84 Or 148, 164 P 589 (1917); *Kurtz v. Southern Pac. Co.*, 80 Or. 213, 156 P 367, *on reh'g*, 80 Or 213, 156 P 794(1916); *McQuaid v. Portland Ry. Co*., 18 Or 237, 22 P 899 (1889); When the County vacated the ROW in 2006, the only title that passed to the Road Association was an easement.[2] Stated another way, the County did not pass fee simple title to the Road Association because it never had the full estate to begin with. The County can – and did – only passed the extent of the property interest that it initially possessed. *See* Oregon Cadestral Map System Manual, First ed. 2003, Vol. 4, entitled Highways and the Law of Dedication, Oregon Department of Revenue, Chapter 16, p. 33 (Stating - as "principle 75," that "the vesting of property made in accordance with ORS 368.366(2) must be determined in recognition of the existing right, title, and interest in the real property of any person, persons, corporations or body politic.").

3. An Engineering Solution is Required to Avoid Liability. The Woodland Heights Road Association has untaken the responsibility to maintain the vacated portion of the Woodland Heights road, and can therefore be held liable for dangerous conditions related to that road. The road association has had actual knowledge of a dangerous and hazardous condition existing in the vicinity of Lot 1, and has done nothing to remedy that problem. The existence of trees at that location does not legally excuse the road association from using best management practices to avoid liability. Rather, the installation of a guardrail is required to shield the road association from liability.

4. Drainage Improvements Are Needed in the ROW. If approved, the applicant would design and build a ditch system in the right of way to reroute and convey stormwater that is currently trespassing upon and flooding lot 1.

The Statutory Definition of the Term "Property Line Adjustment" Is Not Relevant to a Replat.

In his letter dated March 13, 2019, Mr. Clark seeks to apply ORS 92.192(3) to the facts of this case. ORS 92.192 applies, by its express terms, to an application for a property line

[2] An easement is a limited right to go onto and make use of another's land for a specific purpose. The granting of a public road easement gives the county the right to go onto property to do whatever may be necessary to construct and maintain public roads. Since the easement leaves the property under the virtual control of the county, it is removed from the tax rolls. However, the county does not own the right of way or have the right to take away anything from it unless it interferes with the use of the easement. As an example, the county can trim a tree that causes a vision hazard or remove a tree or other material to allow for a road widening. However, the county cannot remove the material for any purpose not related to the road without the property owner's permission.

adjustment ("PLA"). This application is for a replat, not a PLA. Replats are governed by ORS 92.180 to 92.190, therefore ORS 92.192(3) does not apply.

Approval of the Re-Plat Will Not "Devalue Property Values."

Ms. Barbara Boyer, the District Chair of the Yamhill Soil and Water Conservation District, wrote a letter in which she said that the "county should be cautious and not approve a replat that might facilitate the devaluing of other landowner's parcels in the subdivision." However, as we previously noted, "property values" is not an approval criterion for a replat. Furthermore, there is no evidence in the record that approval of these two applications would devalue anybody's property. To the contrary, the proposed road improvements would improve fire access to the entire subdivision, and would most certainly increase neighboring property values. Furthermore, the addition of new homes would create new "comparable sales" for appraisal purposes, which would also have an upward effect on the value of neighboring properties.

Opponent's Request for Meeting of the Land Development Review Committee.

At least one opponent requested the Planning Director to apply YCLDO 4.050, which apparently involves setting up a meeting of a so-called "Land Development Review Committee." YCLDO 4.050 provides:

> **4.050** NOTICE OF LAND DEVELOPMENT REVIEW COMMITTEE (LDRC) MEETING. The Director may schedule a meeting of the LDRC for any partition or subdivision. In the event of an LDRC meeting, notice shall be sent a minimum of seven days before the meeting to the LDRC members, the applicant, the property owner, and the surveyor of the plat, if applicable. No LDRC meeting shall be conducted prior the end of the public comment period required in Section 4.045.

We are not aware of any current existence of a "Land Development Review Committee." The LDRC was a short-lived idea that was enacted in the 1980s at the bequest of Bill Campbell, the Planning Director at the time. Apparently, this process was briefly used during his tenure in the 1980's, but fell into disfavor soon after his departure. The Committee is now only rarely used. However, we are not opposed to the Planning Director calling a meeting of the Committee.

/// /// ///

CONCLUSION

We thank the Planning Commission for hearing this case. We believe the evidence in the record demonstrates that the applicant has met the applicable approval standards. We further believe that the Planning Commission should continue to interpret the lot size averaging provision in a manner that the county has for 30+ years, which is to base the density equation on the entire acreage of applicable district. Such an interpretation allows the County to use VLDR lands as efficiently as possible.

For the aforementioned reasons, we ask that the Planning Commission APPROVE these two Re-plat applications.

Sincerely,

ANDREW H. STAMP, P.C.

/s/

Andrew H. Stamp

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