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MEMORANDUM

To: Marion County Planning Commission

From: Jeffrey L. Kleinman

Date: December 19, 2006

Re: SUB06-3 (Laack, Eide, Rainone, and Rawlins)

I. INTRODUCTION.

I represent Keep Our Water Safe, a group of property owners in the area adjacent to and surrounding the subject site. My clients are concerned about several public health and safety issues relating to the proposed subdivision, including especially the impact upon groundwater quality and availability. My clients will suffer direct and immediate impacts and practical effects if the subject application is approved.

For the reasons we will expand upon in this memorandum and those to be adduced at your hearing, the applicants have not met their burden of proof as to the approval criteria for the proposed subdivision. As a result, their application must be denied.

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II. SCOPE OF MEASURE 37 WAIVERS.

Pursuant to Order No. 05-101 of the Marion County Board of Commissioners, the only

owners/applicants ("owners") not subject to regulations prohibiting subdivision of farmland

are Leroy Laack and Andrew and Margaret Rainone ("Rainones"). Further, any right of the

owners to further develop their property is subject to the Final Order of the Oregon

Department of Administrative Services and Department of Land Conservation and

Development in Claim No. M119864, which waived the relevant state land use regulations

only as to Mr. Laack and the Rainones.

The other owners who have filed the within application have achieved insufficient

rights under ORS 197.352 to be permitted to subdivide the subject property or their interests in

it. North Santiam Paving ("Paving") has no waiver of any kind and no ability to participate as

an owner or applicant in this proceeding. To the extent Paving is participating, this proves a

transfer of waiver rights and the subject county and state waivers are now void as a matter of

law.

To the extent the proposed subdivision can be and is confined to the respective

undivided interests of Mr. Laack and the Rainones, and it complies with all applicable criteria,

it is arguably approvable. To the extent those interests cannot be separated out, and to the

extent the owners without effective waivers would enjoy subdivision rights under this

application, the application in its entirety must be denied. Simply stated, the proposed result is

not permitted by or under ORS 197.352, under which waiver rights are personal and exclusive

to the owner/ownership predating regulation.

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III. THE PROPOSED SUBDIVISION IS SUBJECT TO THE CONDITIONAL USE PROVISIONS OF PRIOR MCRZO 129.020(b) AND 120.070.

As is set out in the Planning Division's report to the Marion County Hearings Officer in Measure 37 Case No. 05-17, the interests of Mr. Laack and the Rainones were subject to the county's RA zoning at the time of acquisition. (A copy of that staff report, dated March 14, 2005, is attached hereto as Exhibit A and by this reference incorporated herein.) As staff states at paragraph 11 on the last page of its report, "under the RA zoning, subdivisions could be approved as a conditional use under Chapter 129.020(b) of the MCRZO."

The Laack and Rainone waivers serve only to return their respective interests to the regulations existing as of their respective acquisition dates. Any rights of theirs to subdivide the property are subject to the conditional use provisions of prior MCRZO 129.020(b). Nothing in the language of ORS 197.352 would serve to waive or otherwise obliterate those provisions. Nonetheless, the applicants have failed to cite or attempt compliance with those criteria.

A copy of MCRZO Chapter 129 in effect as of the respective acquisition dates of Mr. Laack and the Rainones is attached hereto as Exhibit B. MCRZO 129.020(b) specifically describes subdivisions as a conditional use in the RA zone. This section in turn incorporates by reference Specific Conditional Use Section 120.070; a copy of this section in effect during the relevant period is attached hereto as Exhibit C.

The applicants have failed to comply with any of the material provisions of MCRZO 120.070. Under MCRZO 120.070(a), they have failed to show the minimum size of the lots and the maximum density of the subdivision area is consistent with the adopted comprehensive

attempted to take advantage of a single 92.9-acre lot to create an "average" lot size of under 5

Chapter 181, the applicants have carried out an averaging of lot size in which they have

In order to avoid compliance with the Sensitive Groundwater Overlay Zone, MCRZO

V. THE APPLICANTS' METHOD OF AVERAGING LOT SIZE IS UNLAWFUL.

above provisions, it must be denied.

Board's Order No. 05-101. As the subject subdivision requires construction in violation of the

of streets, roads, and utilities in the EFU zone. These provisions were not waived by the

126.010(c) in effect prohibits establishment of new public right-of-way including construction

improvement and construction of streets, roads, and utilities in the EFU zone. RZO

Section 126.010(b) in effect prohibits expansion and realignment of existing right-of-way and

MCRZO 126.010 describes permitted uses in areas subject to Rural Zoning Ordinance.

IV. THE PROPOSED SUBDIVISION VIOLATES MCRZO 126.010.

application *must* fail on this basis alone.

conducted and the applicants have successfully borne the requisite burden of proof. The

No subdivision can be approved for this site until the required analysis has been

show, it will certainly create those conflicts.

proven the division "will not create urban-farm conflicts." In fact, as public testimony will

more than that adopted on the comprehensive plan. Under subsection (e), they have not

with this characteristic. Under subsection (d), the applicants have failed to justify a density

area is heavily agricultural in character, and the proposed subdivision would be inconsistent

the proposed land division will be consistent with the general nature of the area. Indeed, the

plan. Indeed, they have proven the opposite. Under subsection (c), they have failed to prove

