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City of McMinnville, Planning Commission
230 NE 2nd Street, McMinnville, Oregon 97128

Re: Opposition to MP 6-20

Dear Chair Hall and Commissioners:

I am writing to you again on behalf of my clients Cheryl Lambright, Carol Hansen and Earl Anderson to express our continuing concerns and opposition to the Minor Partition application submitted by Steve and Mary Allen (MP 6-20). As noted in our previous written testimony, my clients live within the notice area for this application and own property that will be negatively impacted by any decision by the City to approve the application as submitted.

- Earl Anderson lives at 1100 SW Tall Oaks Drive, McMinnville, OR 97128.
- Carole Hansen lives at 1110 SW Tall Oaks Drive, McMinnville, OR 97128.
- Cheryl Lambright lives at 1130 SW Tall Oaks Drive, McMinnville, OR 97128.

The rear yard of each of my client's property abuts either the easement or the undeveloped right of way that would be impacted by the creation and subsequent development of proposed Parcel 2.

In our prior testimony, we pointed out several deficiencies in the application materials that demonstrated the applicants' failure to meet the requirements of the McMinnville Zoning Ordinance and Comprehensive Plan. These deficiencies existed, despite the fact that Planning Department Staff had determined the application to be complete and in compliance with all required criteria of the City's codes and regulations. Although the applicants have now submitted additional materials to address many of the deficiencies we previously called out, they have still failed to meet their burden of proving that the creation of proposed Parcel 2 would comply with the required criteria and we disagree with Staff's recommendation of approval.

REVIEW CRITERIA

A minor partition application must be reviewed for compliance with the standards and criteria set forth in MZO Chapter 17.53 – Land Division Standards as well as the goals, policies, and proposals set forth in Volume II of the McMinnville Comprehensive Plan. The burden of proof is on the applicant to submit sufficient evidence to demonstrate compliance with the review criteria. If the applicant fails to submit sufficient evidence to meet its burden of proof, then the application must be denied.

The purpose of MZO Chapter 17.53 is described in MZO Section 17.53.010, and includes the intention that land divisions will:

- Assure adequate width and arrangement of streets;
- Provide for the protection, conservation, and proper use of land;
- Secure safety from fire, flood, slides, pollution, drainage and other dangers;
- Protect in other ways the public health, safety and welfare; and,
- Promote the goals and policies of the McMinnville Comprehensive Plan.

For the reasons discussed below, the application fails to meet the purpose of MZO Chapter 17.53, fails to comply with other relevant review standards described in MZO Chapter 17.53, and fails to meet one or more goals, policies and/or proposals in the City's Comprehensive Plan. As a result, the application must be denied.

1. MZO 17.53.060 – Submission of Tentative Partition Plan

In order to ensure that a proposed partition meets the standards and criteria of the McMinnville Comprehensive Plan and Zoning Ordinance, an applicant is required to submit a tentative partition application, applicable fees, and a tentative partition plan. The tentative partition application and plan must contain sufficient information to demonstrate compliance with Section 17.53.060. At a minimum, the tentative partition map must include, among other things:

- Contour lines related to City datum and having minimum intervals of two (2) feet; MZO 17.53.060(A)(9)
- The location and direction of water courses; MZO 17.53.060(A)(10)
- The location of any natural features such as "rock outcroppings, designated wetlands, wooded areas, and natural hazards." MZO 17.53.060(A)(11)

In addition, the application packet must include a Title Report or Partition Guarantee prepared within sixty (60) days of the application date. MZO 17.53.060(A)(8)

In our previous written testimony, we called out the fact that the above-referenced information was missing from the applicant's materials. Since that time, the applicant has submitted a revised tentative partition map and supporting materials that include the required information. In addition, the applicant has submitted an updated Title Report. Therefore, we withdraw our previous objection on this ground.

However, we would point out some observations regarding the new information submitted by the applicant, which have a bearing on additional criteria discussed below:

1. As we had previously noted, by including the required topographic contour lines on its tentative partition map, the Planning Commission can now confirm that proposed Parcel 2 is located on a steep slope (greater than 25%) that falls away to the east into the Cozine Creek floodplain. Although approximately half the parcel is located above the elevation of the 100-

year floodplain, the upland portion of the proposed parcel contains the steepest slopes. In addition, the applicant now acknowledges that Parcel 2, being located on the steep banks of Cozine Creek, is in an area designated by the City as Medium to High Risk for landslides. This area, which is proposed for a residential development, is not suitable for such development as it will very likely be impacted by landslides in the foreseeable future. Simply requiring a condition that any future development on the site will require a future geotechnical study to determine whether development is even feasible or cost effective is not sufficient, as the Planning Commission must decide whether proposed Parcel 2 is consistent with purposes of the land division code before the parcel is created, not after.

2. The applicant submitted, and then attempted to withdraw, a map that depicted the location of several individual significant trees on proposed Parcel 2. Without explanation, the applicant attempted to substitute the map showing the location of individual significant trees on Parcel 2, without a different map that showed no individual significant trees on Parcel 2. Despite their attempt to remove the first map from the record, it remains in evidence and should be considered by the Planning Commission when rendering its decision. Again, simply requiring a condition that any future development on the site will require a future plan to determine whether significant and unique natural features can be protected is not sufficient, as the Planning Commission must decide whether proposed Parcel 2 is consistent with purposes of the land division code before the parcel is created, not after.

3. Finally, we would note that the previously missing information was required to be submitted by the applicant for a reason; namely, it must be submitted so that the Planning Commission can determine whether the proposed partition would meet the purposes of City's land division ordinance by:

- Providing for the protection, conservation, and proper use of land;
- Securing safety from fire, flood, slides, pollution, drainage and other dangers;
- Protecting in other ways the public health, safety and welfare; and otherwise,
- Promoting the goals and policies of the McMinnville Comprehensive Plan.

If this were not the case and if the Planning Commission were not allowed to consider this information as part of its decision, then there would be no reason to require it of the applicant. Therefore, even though the applicant has now met the technical requirement of submitting the required information, a critical review of that information must be performed by the Planning Commission. In this case, a critical review of the submitted information reveals that the applicant has failed to prove that proposed Parcel 2 would meet the purposes of the City's land division code.

2. MZO 17.53.080 – Submission of Future Development Plan

When it is evident that the property to be partitioned can be further divided, MZO 17.53.080 requires that the applicant submit a future development plan. The future development plan is required to be submitted at the same time that the tentative partition plan is submitted and must contain the following information:

- Any potential future lots, including a depiction of the lot sizes;

- Existing and proposed utilities that will serve the potential future lots; and,
- Streets and access points for the potential future lots.

The City is then required to review the future development plan at the same time as the proposed tentative partition to ensure that it substantially conforms to the requirements of MZO Chapter 17.53 and that infrastructure to serve the potential future lots is consistent with current development requirements.

PROPOSED FINDING: NOT SATISFIED

DISCUSSION: In our previous testimony, we pointed out that the applicant had failed to submit a Future Development Plan, which would have allowed the Planning Commission to ensure that any potential future parcels, as well as the utilities, streets and access points for the potential future parcels substantially conform to the requirements of MZO Chapter 17.53 and are consistent with current development standards. Since that time, the applicant has submitted a Future Development Plan and supporting materials that include the required information.

As we suspected, the plan shows that the applicant intends for the development of not just the single proposed Parcel 2, but eventually a second additional parcel on the west bank of Cozine Creek immediately south of Parcel 2. The plan to create a second additional parcel in that location is inappropriate and inconsistent with the purposes of the land division code for all the same reasons that the creation of proposed Parcel 2 does not conform to the code.

3. MZO 17.53.100 – Creation of Streets

A private easement may be approved for access to a proposed new parcel in a partition only under limited circumstances, such as when it is the only reasonable method to access the rear portion of a lot that is unusually deep. However, a private easement may only be granted for access to “not more than three (3) parcels including the original parcel.”

PROPOSED FINDING: NOT SATISFIED

DISCUSSION: In their original Staff Report, planning department staff advocated the position that:

“Proposed parcel 2 is provided legal access via existing private easement, as indicated on approved Partition Plat 2001-03, and through an undeveloped public right-of-way. Although proposed Parcel 2 is the fourth lot accessed via the private easement, the City has acknowledged and approved this deviation from 17.53.100(C)(1) through prior land-use decision MP 7-00 and Ordinance No. 4741, and by approving Partition Plat 2001-03.”

However, a review of prior land-use decision MP 7-00, Partition Plat 2001-03, and Ordinance 4741 clearly show that they pertained to the partition of property located immediately north of the subject property. The question of whether to allow the partition of the subject property

and for any number newly created parcels to utilize the easement for access in variance to MZO 17.53.100, was not decided by the Planning Commission or City Council at that time.

In their most recent Staff Report, planning department staff again advocates for a more expansive reading of the City's 20-year-old decision than is apparent from the plain language of the decision itself. It is true that, prior to eliminating a legal right of access to the western portion of the applicant's property, the City required that a right of access be provided by private easement. However, as we noted in our prior testimony, preserving access to a single existing parcel of undeveloped land by private easement is very different from authorizing a potentially unlimited number of future parcels to also utilize that private easement for access.

In its decision to grant the street vacation 20 years ago, the City never provided the requisite notice, land use hearing, or other procedural requirements that would have been necessary to consider and grant the variance that is now claimed to have been embodied in Ordinance 4741.

For all these reasons, the applicant must establish that a variance to the three (3) parcel limitation set forth in MZO 17.53.100 is appropriate prior to the creation of proposed Parcel 2 (or any future additional parcels) utilizing the existing narrow driveway easement for access. Since the applicant has withdrawn their request for a variance to 17.53.100, the Planning Commission must apply the ordinance as written and find that the creation of proposed Parcel 2 is prohibited as it would exceed the number of parcels allowed to be accessed off a single private easement.

4. COMP PLAN POLICY 80.00

In proposed residential developments, distinctive or unique natural features such as wooded areas, isolated preservable trees, and drainage swales shall be preserved wherever feasible.

PROPOSED FINDING: NOT SATISFIED

DISCUSSION: In our prior written testimony, we pointed out that the applicant had failed to submit a tentative partition plat that contained the following required information:

- Contour lines related to City datum and having minimum intervals of two (2) feet; MZO 17.53.060(A)(9)
- The location and direction of water courses; MZO 17.53.060(A)(10)
- The location of any natural features such as "rock outcroppings, designated wetlands, wooded areas, and natural hazards." MZO 17.53.060(A)(11)

Without this information, the Planning Commission was in the dark regarding the location of distinctive or unique natural features on the subject property and lacked sufficient evidence to find that the proposed creation of Parcel 2 for residential development would ensure that those distinctive or unique natural features (such as wooded areas, isolated preservable trees, and drainage swales) would be preserved on the subject property.

Since that time, the applicant has submitted a revised tentative partition map and supporting

materials that include the required information. As a result, the Planning Commission can now confirm that proposed Parcel 2 is located on a steep slope (greater than 25%) that falls away into the Cozine Creek floodplain. Although approximately half the parcel is located above the elevation of the 100-year floodplain, the upland portion of the proposed parcel that is identified for development is on steep slopes not suitable for future development and will very likely be susceptible to landslides in the foreseeable future. The applicant has even acknowledged that Parcel 2, being located on the steep banks of Cozine Creek, is in an area designated by the City as Medium to High Risk for landslides.

The applicant has also submitted a map that depicted the location of several individual significant trees on proposed Parcel 2 as well as an aerial photograph showing a thick forest of trees along this critical riparian area. This heavily wooded area on the steep banks of the Cozine Creek watershed is exactly the type of unique and distinctive natural area that is intended to be protected by Comp Plan Policy 80.00.

The proposed condition of approval is not sufficient to find compliance with Policy 80.00 and, given the lack of suitable upland space available on the west side of the property, there are no conditions of approval that could be adopted to ensure compliance with this criterion with respect to Parcel 2. Therefore the request to partition the property in a manner that creates Parcel 2 must be denied.

5. COMP PLAN POLICY 99.00

An adequate level of urban services shall be provided prior to or concurrent with all proposed residential development, as specified in the acknowledged Public Facilities Plan. Services shall include, but not be limited to:

- 3. Streets within the development and providing access to the development, improved to city standards (as required).*

PROPOSED FINDING: NOT SATISFIED with respect to Streets providing access to the proposed development.

DISCUSSION: As noted in our previous written testimony, the original draft Decision Document omitted any proposed findings related to the adequacy of streets providing access to future residential development within proposed Parcel 2, as required by Policy 99.00. The new draft Decision Document includes proposed findings related to access to Parcel 2 by noting that the access will be through a private easement, which is an allowed method for providing access for “a total of not more than three (3) parcels including the original . . .” MZO 17.53.100(C). However, as discussed above, the existing private driveway easement may not be used to access the proposed additional parcel without a variance (which has not been applied for). Therefore the request to partition the property in a manner that creates Parcel 2 must be denied.

SUMMARY

The applicant has failed to meet their burden of proving that the proposed minor partition would satisfy all applicable provisions of the McMinnville Comprehensive Plan and Zoning Ordinance. It is our position that, at the very least, the western portion of the subject property is not suitable for the creation of one or more new parcels or the associated residential development that would follow. Therefore, we request that the Planning Commission deny application MP 6-20 as it fails to meet the purpose of MZO Chapter 17.53, fails to comply with other relevant review standards described in MZO Chapter 17.53, and fails to meet one or more goals, policies and/or proposals in the City's Comprehensive Plan.

Sincerely,

David R. Koch