EXHIBIT 21

RECEIVED
DEC 07 2016
City of Beaverton
Planning Services

**ANDREW H. STAMP, P.C.**
ATTORNEY AT LAW
Kruse-Mercantile Professional Offices, Suite 16
4248 Galewood St.
Lake Oswego, OR 97035

Admitted in Oregon.

Tele: 503.675.4318
Fax: 503.675.4319
andrewstamp@comcast.net

7 December 2016

**VIA EMAIL:** esasin@beavertonoregon.gov

Beaverton Planning Commission
C/o: City of Beaverton Planning Division
12725 SW Millikan Way
P.O. Box 4755
Beaverton, OR 97076

Re: **Appeal of Preliminary Partition Decision**
*Project Name:* SW 155th Avenue 3-Lot Partition
*Applicant:* ADTM Development, LLC
*Case File No.:* LD2016-0002, TP2016-0003, FS2016-0001
*Project Location:* 10510 SW 155th Avenue, Tax Lot 00100 of Washington County's Tax Assessor's Tax Map 1S132BD

Dear Members of the Beaverton Planning Commission,

I represent the Murrayhill Owner's Association with regard to ADTM Development, LLC's ("ADTM's") partition application for the Property (the "Decision"). After the initial evidentiary hearing, the applicant proposed significant modifications to the site plan. After reviewing the proposed changes, we continue to request that the Planning Commission reverse the Decision and deny ADTM's application proposal for the reasons set forth both herein and in previous letters.

## I. Legal Analysis.

### A. Minimum Density.

In our previous submittal dated November 7, 2016, we pointed out that the applicant is proposing development at less than the required minimum density. All of our previous questions regarding this topic remain unanswered, and the applicant has still not provided substantial evidence to show how its math pencils out. The key code language at issue requires the following:

> ***Projects proposed at less than the minimum density must demonstrate on a site plan or other means, how, in all aspects, future intensification of the site to the minimum density or greater can be achieved without an adjustment or variance.***

BDC 20.25.05. *See also* BDC 40.45.15.4 (C)(4) ("Oversized parcels * * * resulting from the partition shall have a size and shape that facilities the future potential partitioning or subdividing of such oversized lots * * *"). To meet these criteria, the applicant provided a map that shows the dwelling on lot 1 being torn down and replaced with two dwelling units. The applicant's analysis relies on a key legal assumption: that "future intensification" of the site can presume a potential tear down of existing or proposed structures. This is a highly novel and unprecedented interpretation of this standard, which has the practical effect of making the standard illusory and meaningless. In fact, it really turns the entire premise of the standard on its head. Shadow plats (aka "transitional plats" or "ghost plats") are used to satisfy minimum density requirements if the applicant can demonstrate that the current development: (1) would not preclude the provision of adequate access and infrastructure to future development, and (2) would allow for the eventual satisfaction of minimum density requirements through future development. These standards are based on the recognition that once a dwelling or structure is built, it is extremely unlikely that it will be torn down within any reasonable planning horizon. In other words, these standards recognize and assume that structures are permanent, at least over the applicable planning horizon

Given this reality, these standards create a response to the fact that unregulated placement of dwellings can hinder future efforts to achieve compact urban form. To ensure that the density goals are met, BDC 20.25.05 requires a developer to site dwellings on oversized lots in a manner that ensures that room is left to build additional dwellings in the future. If the City allows developers to create shadow plats premised on the concept that buildings can simply be torn down, then the entire shadow platting exercise becomes effectively meaningless. Stated another way, there is no set of facts where existing structures cannot, in theory, be torn down in replaced, so in every case any developer could always assume tear downs will occur. However, economic reality dictates that such tear downs are exceedingly unlikely to occur. Thus, allowing compliance to be premised on a future tear down makes the standard meaningless. For this reason, the Planning Commission should be mindful of the precedent it would be setting here if it approves this development application. The only way the applicant can comply with BDC 20.25.05 is to tear down the existing dwelling.

The applicant responded to this concern in the narrative accompanying Exhibit 16. However, the applicant's argument is not responsive to the issue we raise. The inquiry does not center on the meaning of the term "future," as the applicant. Rather, the key inquiry is whether the term "intensification" includes tear downs, and whether there is substantial evidence to support a conclusion that "future intensification" of Lot 1 specifically would likely involve a tear down of the existing dwelling. The correct answer is "No" to both inquires.

**B. Setbacks.**

The applicant's new site plan, Exhibit 16 page 2 of 15, dated Nov. 22, 2016, shows a 3 foot side yard setback for the proposed dwelling on Lot 3, and shows the existing deck on Lot 1 being reduced in size as compared to previously submitted maps. No explanation for this is provided. As currently configured, the plans show insufficient yard setbacks to meet current setback standards. Moreover, the applicant uses the wrong methodology to identify the front yards for all three lots.

**C. Lot Configuration & Lot Design.**

Both lot 2 and lot 3 have a lot configurations that are simply bizarre. For example, Lot 3 consists of 13 lot lines, and the front "yard" consists of nothing more than a 15-foot wide driveway. This driveway is not large enough to meet the minimum standards of the Fire Marshal, and there is no turn-around feature provided for a responding fire apparatus. The homes proposed on Lots 2 and 3 are snout house designs with garages pushed out 8 – 16 feet out in front of the remainder of the proposed structure. Such a design is almost certainly going to meet with disapproval from the HOA's Architectural Review Committee ("ARC"), as there is no precedent for such strange designs in Murrayhill. In fact, we can envision no possible dwelling structures on these oddly shaped lots that will feasibly meet HOA standards.

**D. Private Street: Tract A**

Lot 2's front lot line is only 24 feet wide, and Lot 2 does not have any street frontage to a public street. Similarly, Lot 3 has only 20 feet of direct street frontage, but this 20 feet is unusable since it is burdened with a utility easement. The usable access from Tract A to Lot 3 is only 15-16 feet wide. BDC 60.55.25(4) provides:

> ***4. Streets and bicycle and pedestrian connections shall extend to the boundary of the parcel under development and shall be designed to connect the proposed development's streets, bicycle connections, and pedestrian connections to existing and future streets, bicycle connections, and pedestrian connections. A closed-end street, bicycle connection, or pedestrian connection may be approved with a temporary design.***

The term "street" is defined as follows:

> ***Street. A public way which affords the principal means of access to abutting property.***

In this case, Tract A does not meet this definition because it is not proposed to be dedicated as public ROW, and it is not wide enough to be a public street, nor is it being built to public street

standards. We have not been able to find clear authorization in the Beaverton Development Code that allows a lot to be served by a private street placed in a common ownership tract.

**E. Internal Circulation.**

Tract A is only 23 feet wide, with is insufficient to allow for the safe passage of two vehicles and still maintain the required 4 foot separation for bike and pedestrian connections. This is especially true given the steep slope of the property, and the problem will be amplified if the owners of Lot 1 build a fence on the southwest property line. This does not comply with BDC 40.03.1(F), which demands that the development provide a "safe and efficient vehicular and pedestrian circulation patterns within the boundaries of the development.

## II. Conclusion.

This application proposes oddly shaped lots that will lead to many problems for the future owners of these lots. The application is really trying to fit a square peg in a round hole. The Planning Commission should deny this deeply flawed application.

Having said that, the Murrayhill Owners Association Board of Directors has agreed to meet with the applicant to find a potential path forward for this project.

Sincerely,

**ANDREW H. STAMP, P.C.**

*Andrew H. Stamp*

Andrew H. Stamp

AHS:ahs
CC:
Mike and Tynisha Safstrom - mandtdevelopmentllc@icloud.com
Scott Wilson - swilson@sylvan-products.com
Margot Seitz - mseitz@fwwlaw.com