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October 4, 2016

City of Beaverton Planning Division
Community Development Department
12725 SW Millikan Way
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 Planning Division:

This office represents Richard King, the owner of real property located at 15460 SW Heron Court, Beaverton, Oregon. Mr. King's entire rear property line runs along the eastern property line of 10510 SW 155th Avenue, Beaverton, Oregon 97007 (the "Property"). I am writing to appeal the above-referenced decision which conditionally approves ADTM Development, LLC's ("ADTM's") partition application for the Property (the "Decision"). We respectfully request that the Planning Commission reverse the Decision and deny ADTM's application proposal. Alternatively, if the Planning Commission is inclined to affirm the Decision, we request that it incorporate additional conditions to specifically address the risk of harm posed by the development. *See*, BDC 10.65.1.

This appeal satisfies the requirements of Beaverton Development Code ("BDC") 50.65.1-2. As a preliminary matter, this appeal is being timely submitted by the October 3, 2016 deadline with the required appeal form, attached hereto. BDC 50.65.1. Additionally, this appeal satisfies the conditions of BDC 50.65.2 A-F as follows:

A. The case file number designated by the City.

The City of Beaverton Planning Division ("City") has designated three file numbers for the proposed partition – LD2016-0002, TP2016-0003, and FS2016-0001.

B. The name and signature of each appellant.

The appellant is Richard King. His signature is provided on the attached appeal form.

C. Reference to the written evidence provided to the decision-making authority by the appellant that is contrary to the decision.

On September 7, 2016, this office submitted a comment letter in opposition to ADTM's partition application ("Application") to the City on Mr. King's behalf.[1] That letter was further supported by evidence submitted therewith (*e.g.*, BDC citations, Murrayhill plats, a Property Profile Report, deed, photos, and the Murrayhill Owners' Association's ("MOA") Amended Declaration of Covenants, Conditions, and Restrictions ("CC&Rs")). A copy of the CC&Rs is enclosed herewith.[2] As a member of the Murrayhill Owners' Association ("MOA"), Mr. King also supported those comments submitted by the MOA (contained in two separate letters).

Those comments addressed a myriad of legal and factual issues, including, but not limited to: (1) the Application's failure to satisfy the BDC's setback criteria, (2) legal issues with extending the access to the Property for additional residences, (3) safety concerns, and (4) the serious risk of harm posed by the proposed development. The decision approved the Application over these objections. As such, the "written evidence provided to the decision making authority by the appellant … is contrary to the decision."

D. If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.

As provided on the attached appeal form, I am the contact representative for Mr. King. This appeal is being submitted by a single individual. As discussed herein, Mr. King submitted prior comments to the City which are contrary to the Decision issued.

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[1] That letter and the supporting documents were submitted via email with pre-approval from Ms. Sasin.

[2] The CC&Rs were referenced throughout Mr. King's comments. My office offered to provide a complete copy of the CC&Rs to further support the references contained in the comments at the time of the original submission. A complete copy is being submitted with this appeal.

E. The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.

1. The Findings are Inadequate to Support Any Conclusion that the Lot Lines and Yards Meet the Standards Set Out in the Code (BDC 20.05.15).

The Decision under appeal is not supported by adequate findings which explain how the determination was made as to which lot lines constituted "front lot lines," "side lot lines," and "rear lot lines," as defined in Chapter 90 of the Beaverton Development Code ("BDC") and made applicable to this decision via BDC 20.05.15. Nor does it explain how the City identified and measured the front, side, and rear yards and associated setbacks, as shown on the plat.

- The Code definition of front lot line presumes that any lot is either an "interior lot," "corner lot," or "flag lot." The findings do not identify which of these three categories of "lot" applies to each of the three proposed lots.

- The existing structure was previously approved as having the northwesterly façade of the dwelling identified as facing the "front lot line" and the southeasterly façade facing the "rear lot line." The decision under appeal does not explain how that determination can be changed retroactively, even though the determination is supposed to be made at "initial construction." If the time of initial construction (~1992) is used as the milestone for the existing dwelling on proposed Lot 1, then, as proposed, the "rear lot" does not meet the 20-foot setback.

- The decision does not determine whether Tract A is a "street" for purposes of the definition of "front lot line." It does not appear to meet the definition of "street" set forth in the Code, because it is not "a public way." If "Tract A" is considered to be a "street," then the decision also does not account for the fact that the definition of "front lot line" applies to any and all lot lines which "abut" a "street." Assuming that Tract A is a "street," then proposed Lots 1 and 2 each have two "front lot lines."

- Proposed Lot 1 cannot be an "interior lot" because it does not "abut" a "street." In any event, the decision does not explain how the lot "abuts" a street, nor does it explain the City's reasoning as to how it determined which, of the two competing lot lines which connect to the street at a single point, is the "front lot line."

- If proposed Lots 2 and 3 are considered "flag lots," then the decision does not identify which boundary of the "flag" is a "front lot line."

- The yard setbacks are incorrectly measured on the plat. The definitions of "front yard," side yard," and "rear yard" all require the City to identify a "line which is parallel to the [front, side or year] lot line or reservation line" and runs the "full width" of the lot. Once that line is drawn, the setback is to be measured as the "distance between the two lines." The only logical way to read that requirement is to measure the distance of a line that is *perpendicular* to those two lines. The decision errs by measuring the yard at an oblique angle in some instances.

2. <u>"Lot 3" of Proposed Partition Fails to Meet Flexible Setback Requirements (BDC 40.30.15.3.C)</u>

The partition proposal requires Flexible Setback approval. In order to obtain such approval, the applicant must satisfy the requirements set out in BDC 40.30.15.3.C (*i.e.*, flexible setback application in conjunction with a land division). In this case, the Applicant has not met that burden and, as a result, the findings of fact in the Decision are inadequate. Specifically, an applicant must present evidence establishing that

> The proposal is compatible with the surrounding area regarding topography, vegetation, building character, and site design. In determining compatibility, consideration shall be given to harmony in: scale, bulk, lot coverage, density, rooflines, and building materials.

BDC 40.30.15.3.C3.

As detailed in our original comments, the proposed site design, building size and vegetation is *incompatible* with the "surrounding area". The flexible setback was included in the application to allow the developer to place two additional homes on a severely angled triangular lot. The proximity and relative sizes of the proposed homes and yards are in stark contrast to those in the immediate neighborhood. Although the proposal does not contain specific home designs, the resulting lot shape and size strictly constrain the size of the homes which could be built. The surrounding single family lots contain sizable houses with ample yards. The "building character, and site design" for the proposed development are markedly different.

In contrast, the Decision under appeal does not identify a "surrounding area." That is a fatal flaw. The surrounding area includes, at a minimum, the four (4) houses on SW Herron Court and one house on SW 155th Avenue. The average size of the houses on those lots

is 3,278 square feet, whereas this partition shows proposed house sizes about one-third of that; in fact, the home proposed for Lot 3 is a mere 1,034 square feet. The extensive private driveway and sidewalks are unlike any single family lot in the Murrayhill subdivision. Moreover, the application proposes setbacks to neighboring properties which are much closer than is compatible with the surrounding area, especially given the high priority Murrayhill has given to providing reasonable open distances, greenspaces, and low percentages of hardscape while still balancing the need for optimizing reasonable density requirements.

Also, there are clearly not enough details in this application regarding other important components of "compatibility" standards, which include the intended design features of the homes and surrounding vegetation and planting plans, which therefore does not allow any method to properly evaluate full compatibility with the "surrounding area." The findings simply do not address those issues or the incompatibility of the proposed home size, "bulk, lot coverage, [and] density," with the surrounding area.

Lastly, it should be noted that the findings also rely on the MOA to insure that the rooflines and building materials are consistent with the surrounding areas. However, the MOA has taken the position that the proposed development is fundamentally inconsistent with the surrounding area. The MOA cannot resolve this issue by restricting building materials or rooflines.

3. Storm Drainage System is Inadequate to Protect Neighboring Properties from Channelized Flow of Stormwater.

BDC 40.03(A)(1) requires that "[a]ll critical facilities and services related to the proposed development have, or can be improved to have, adequate capacity to serve the proposed development at the time of its completion." BDC 40.03(1)(J) requires that "[g]rading and contouring of the development site is designed to accommodate the proposed use and to mitigate adverse effect(s) on neighboring properties, public right-of-way, surface drainage, water storage facilities, and the public storm drainage system. However, the proposed storm drainage system is proposed to have an "outfall" "at the southernmost portion of proposed Lot No. 3." This outfall is not adequate to prevent channelized flow of stormwater from exiting the property, in violation of both state and local law.

The original lots in Murrayhill were laid out with optimum drainage in mind, and to minimize impact to downstream water quality and on neighboring properties. This is why this particular lot was maintained as a single house lot, instead of re-engineered for two or more houses by the original engineering and environmental team at Columbia Willamette (the original developer of Murrayhill). The extremely high percentage of hardscape proposed in this application on this steep slope on Lot 108 will capture water which is currently absorbed into the

ground over a broad area, and will instead concentrate and accelerate these surface waters into channelized flows. The use of a rip rap outfall area will greatly increase channelized flow onto neighboring properties, in violation of BDC 40.03(1)(J). This application does not adequately define how the proposed partition and development will diffuse water to prevent erosion and impact on downstream water quality.

4. Tree Removal Plan.

This Application shows an aggressive removal of trees, including many of which are not within the proposed building envelopes. Murrayhill has taken extra measures since the mid-1980s to preserve existing trees and greenspaces on every lot in a balanced fashion which takes into account air quality, erosion control, wildlife habitats (including fish), and the aesthetics of mature trees. Trees marked 3, 7, 8, 9, 10, 26, 27, and 28 are not within the proposed building envelopes, and are marked for removal for intended grading and extensive hardscape on this steep lot, which also is not consistent with the surrounding area, and creates a lot of extra channel water to the concentrated drainage area and into rip rap.

This will push extra water onto neighboring lots, especially Murrayhill lots 28 and 29, creating liability for neighbors and downstream fish habitats, which also violates Metro's objectives. Additionally, trees #20 (34" dbh) and #25 (33" dbh) are large trees more than 75' tall, which take in huge amounts of water per day during the rainy season on this steep lot, and, therefore, their intended removal will further exacerbate drainage and compatibility issues.

5. Traffic Safety Issues.

The Decision dismisses concerns regarding traffic safety, by simply stating that a traffic impact study is not required. However, the Applicant has not demonstrated that the approach road has adequate sight distance to *not* create a safety issue for the 85-percentile speed of traffic which uses SW 155th Avenue. The Applicant has not provided a sight distance study, as required by BDC 60.55.35(1). This study is a required component necessary to adequately demonstrate safe access to the street system. There have been previous accidents near where the proposed side street will access SW 155th Avenue, and there are concerns about some line-of-sight issues, especially when turning left out of a steep and angled approach to SW 155th Avenue, thus potentially putting vehicular traffic and pedestrians at risk.

6. The Conditions of Approval are Not Sufficient to Protect Against Risk of Harm.

Under BDC 10.65.1, the City "cannot approve applications the impacts of which cannot be mitigated through reasonable roughly proportional conditions of approval." The proposed partition poses a significant risk of harm to Mr. King and the surrounding homeowners. As described in the Decision, the proposed development is constrained by a vegetated corridor

and wetlands which require special facilities to mitigate contaminated runoff from impacting a tributary of Summer Creek. Substantial water control measures are necessary to protect against erosion and drainage issues.

The conditions in the Decision need to go further to "mitigate" or balance the risk of harm. For example, if the owner starts but does not complete the project, erosion and runoff problems will be seriously exacerbated. It is our understanding that the current owner has suggested it will remove trees, grade the site, and market the property as "buildable lots." However, given the investment required, it is possible that no builder will be interested in taking on this project and completing the conditions of approval. Temporary erosion and water control measures could easily fail if the buildout is not completed. In order to "mitigate" the "impact" of the proposal, the Decision should require the owner to establish that all improvements designed to protect the surrounding properties (*i.e.*, water management systems, erosion control measures, etc.) can and will be funded and timely completed before tree removal and site grading begins.

Moreover, there are serious concerns about the owner's ability to complete the proposed partition plat based on the information provided in the application. Under ORS § 92.075(1), (3), the partition plat must be signed by the owner and its lender. Specifically, a partition plat which includes "any dedication or donation of land to public purposes" requires the explicit consent of the "holder of any mortgage or trust deed." ORS § 92.075(3).

Here, ADTM proposes to donate a portion of the Property for a public purpose – *i.e.*, preservation of wetlands. It appears that ADTM purchased the Property for $337,000 in January of 2016 with a mortgage from Veristone MTG, LLC for the full purchase price. Not only is lender consent required, but this also suggests the owner is overleveraged with respect to this property. The surrounding properties will be damaged if the property is prepared for a final partition plat (*i.e.*, tree removal, grading, etc.) and the plat cannot be completed due to lack of lender consent. The City should use its discretion under BDC 10.65.1 to expand the security requirements in the Decision to ensure that the property is not prepared for development unless and until the plat can be completed as proposed and the development completed.

7. Factual Errors in Application Raise Concerns about Standing to File Application.

Under BDC 40.45.15.4.D, a partition application can only be made by the property owner or its authorized agent. Some factual errors in the Application raise concerns about whether the appropriate party has actually submitted the application. The Application lists the property owner as "M & T Development LLC, c/o Mike Safstrom." The owner currently on title is ADTM. The Decision reflects that but lists the contact for ADTM as "Mike Safstrom." According to information publicly available from the Oregon Secretary of State website, Mike

Safstrom does not appear to be a manager or member of ADTM. Based on the Application, it is unclear if he is an authorized agent for the owner.

8. Legal Access to Property.

The Decision erroneously states that the City of Beaverton released the restriction on access from Lot 108 in Murryhill Plat No. 18 in a letter. The letter provided by the City does not release the restriction which is clearly noted in Plat No. 18 (outlined in detail in Mr. King's original comments). Rather that letter is simply a request from prior developer regarding access. It appears the access restriction from Plat No. 18 may have simply been missed. Access should not be enlarged now.

F. The appeal fee, as established by resolution of the City Council.

The appeal fee of $250 as specified in the Decision is submitted herewith.

In conclusion, we respectfully request that the Planning Division reverse its Decision. Thank you for your consideration of this appeal. If you have any questions or would like any additional information, please let me know.

Sincerely,

Margot D. Seitz

MDS/mb
Enclosures
cc: Richard King (w/o encl.)

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