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Via Hand Delivery

September 26, 2017

Lane County Board of Commissioners  
125 E 8<sup>th</sup> Avenue  
Eugene OR 97401  
(541) 682-4203

Re: Appeal of the denial of a Forest Template Dwelling in Impacted Forest Lands Zone (F-2)  
(Petersen/Wolcott, 509-PA 15-05770).

Please accept this argument on behalf of LandWatch Lane County, a party of record to this proceeding. The Hearings Official correctly denied the application, and, subsequently, on reconsideration, affirmed his denial of the application. The Board of Commissioners should simply affirm the Hearings Official's well-reasoned decision.

On appeal, the applicant presents three separate arguments, each of which fails to demonstrate that the Hearings Official erred.

I. The Hearings Official correctly applied the Court of Appeals' *WREDCO* decision

The Planning Director and the Hearings Official both determined that the creation of the property was inconsistent with the Court of Appeals' decision in *WREDCO v. Polk County*, 246 Or App 548 (2011). *The WREDCO* decision stands for the proposition that land divisions, including partitions, vacate the underlying lots. Those underlying lots, therefore, have no continuing viability in light of subsequent partition. In *WREDCO*, the underlying lots were created by subdivision, and the subsequent partition had the effect of vacating those underlying lots when it created the new parcels as part of the partition. Here, the applicant argues that *WREDCO* should not apply to lots created by deed. The distinction drawn by the applicant does not change the analysis under *WREDCO*. When an applicant chooses to partition property, that partition has the effect of vacating the pre-existing lots and creating the new parcels, regardless of how those underlying lots were created. If this were not the case, then a partition that occurred over pre-existing lots or parcels would create a spider web of lot and parcel lines, an outcome that the Court of Appeals found to be incredulous: "It is also difficult to imagine that the legislature intended the previous lot lines to survive such a process, creating a spider web of overlapping lots and parcels." Indeed, such an outcome would prove unworkable within Oregon's land use system. The applicant's attempt to upend the Court of Appeals' holding should, therefore, be rejected.

II. The Hearings Official correctly interpreted the meaning and effect of the County's 2003 legal lot verification form

Next, the applicant is simply dissatisfied with the preliminary legal lot verification process. The basic problem with the applicant's argument is that it is too little too late. If the applicant disagreed with the preliminary legal lot verification at the time it occurred, then that would have been the time to address that issue, not more than a decade later. The preliminary legal lot verification expressly provided that it was preliminary, stating: "This is a preliminary indication that the above referenced property, as further designated on the enclosed map, is a legal lot. The decision that this property constitutes a legal lot will be made at the time of the first permit or application action where a legal lot is required." Therefore, the 2003 legal lot verification was a *preliminary* legal lot verification, which, at the time, had not yet been noticed as a final land use decision, and the applicant's dissatisfaction presents no basis for reversal or remand.

III. The Hearings Official correctly interpreted and applied ORS 92.176 (validation of a unit of land)

Importantly, the subject property itself has not been subject to an application for a validation of a unit of land. It is an adjacent property that submitted such an application and received approval. The applicant purports to ride the coattails of the adjacent property, but fails to present a coherent argument as to why the subject property's legal lot status would be affected by an adjacent property. The subject property is unaffected by the validation of unit of land for 017-P2728. The applicant's new argument is that the subject property is some type of "lawful remainder." There is simply no case supporting such a finding, and LUBA has repeatedly noted that a "remainder" is a term that does not arise in ORS chapter 92, 197, or 215. Therefore, the applicant's argument should be rejected.

IV. LandWatch fully supports and adopts the arguments of staff

LandWatch fully supports staff's findings contained within the staff report, and expressly adopt those findings as if set forth here in full.

V. Conclusion

For the foregoing reasons, the Planning Director decision and the Hearings Official decision should be upheld and the appeal denied.

Sincerely,



Sean T. Malone  
Attorney for LandWatch Lane County