Exhibit K.1

DUNN CARNEY LLP

Ty K. Wyman
Admitted in Oregon and Washington
twyman@dunncarney.com
Direct 503.417.5478

November 11, 2022

Via email: lup-hearings@multco.us and lup-submittals@multco.us

Multnomah County Land Use Hearings Officer
c/o Land Use Planning Division
1600 SE 190th Avenue
Portland, OR 97233-5910

Re: Lot of Record Verification, 16900 NW Sauvie Island Road
County Case File No.: **T2-2022-15447**
Our File No.: MAH16.4

Dear Hearings Officer:

We represent the applicant, Patrick Maher, in the referenced matter. This letter constitutes the applicant's final argument. My Oct. 21 letter described the applicant's case in some detail. Planning staff provided on Nov. 4 a relatively brief response.

Finding little in staff's Nov. 4 memo that would assist the Hearings Officer's decision, I continue to believe that the Aug. 29 staff decision denied the application based on an errant application of MCC 39.3070.A.2. That provision reads in material part as follows:

> A group of contiguous parcels or lots: . . . (b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

I find that this mandate can be given effect only in those circumstances where each constituent unit of land is in the same ownership, which is not the case here.

I do not find in staff's Nov. 4 memo meaningful rebuttal to the applicant's case. Staff's first three points do not merit response. MCC 39.3070.A establishes thresholds to applying its substantive provisions. My Oct. 21 letter (p. 1) describes how, on a textual reading, the Hearings Officer may reasonably find those thresholds not reached in this case. Recognizing the examples set forth after the code text, however, I accept for purposes of argument that the Hearings Officer may wish to proceed with application of the "shall be aggregated" provision of subsection (2).

I find the fourth point of staff's Nov. 4 memo odd and incomplete. The title - "Argues that Lots 1100 and 1200 are under different ownerships" - suggests that the ownerships are in dispute. This suggestion would be novel. The Hearings Officer recognized at hearing that the units of land are not in the same ownership. Staff offered no contradiction to that.

Furthermore, the evidence proves the separate ownership. Exhibit A.6 deeded Lot 1100 to Michael Robideau. Exhibit A.4 deeded Lot 1200 to Mabel Dudley.

Moreover, the MCC 39.4210 specifically defines "same ownership:"

> Same person or persons, spouse, minor age child, same partnership, corporation, trust or other entity, separately, in tenancy in common or by other form of title.

No one has suggested that this definition subsumes the Estate of Mabel Dudley and Mr. Robideau.

I find staff's fifth point – "Argues feasibility of consolidation condition from prior decision" - also *non sequitur*. As described at p. 2 of my Oct. 21 letter, staff (rather than the Applicant) has suggested that consolidation of Lots 1100 and 1200 is feasible.

I do not dispute the sixth point of staff's Nov. 4 memo, but find it unavailing. I referenced the submittal requirements simply to emphasize the fact that the applicant specifically did not join Lot 1200 into this application. Staff cites no law that would allow the County to do so on its own initiative.

Staff's seventh point is that aggregation constitutes a mandate, rather than an ability.

> The Code does not say that contiguous lots under the same ownership on 2/2/90 COULD be aggregated if some other conditions are present. It states that contiguous lots under the same ownership on 2/2/90 SHALL be aggregated. Because the Code says "shall," we interpret that to mean aggregation must occur and there are no other options.

I see nothing to debate in this assertion; it simply misses the relevant question – how the mandate is applied where (as here) the units of land are not in the same ownership. Notably, staff offers nothing to repudiate the applicant's evidence that Lot Consolidation is impossible in this circumstance. It would have helped the Hearings Officer immeasurably to explain how exactly the County proposes to consolidate Lots 1100 and 1200; denying this application does not do it.

Staff goes on to quote the following from *Kishpaugh v. Clackamas County*, 24 Or LUBA 164, 172 (1992).

> ORS 92.017 does not preclude a local government from imposing zoning or other restrictions which directly or indirectly require that two or more lawfully created lots be combined for purposes of development.

This oft-cited statement does not inform the Hearings Officer's decision on the present application because this lot of record verification does not involve:

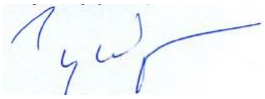
1. imposition of zoning or other restrictions which directly or indirectly require that two or more lawfully created lots be combined for purposes of development; or

2. two or more lawfully created lots.

In the end, staff offers no meaningful rebuttal to the applicant's point that the aggregation mandate of MCC 39.3070.A.2.b can be given effect only in those circumstances where each constituent unit of land is in the same ownership.

As noted in my prior letter, the subject application warrants approval without condition. Thank you for your consideration.

Very truly yours,



Ty K. Wyman

TKW:

cc: Patrick Maher (via email)
Kevin Jacoby (via email)

DCAPDX\4452342.v1