Cutler Law Group LLC

Thomas H. Cutler

Email: thomas@cutlerlawgrp.com

Cutler Law Group, LLC | 15585 SE River Rd.| Oak Grove, OR 97267 | Phone: 503-888-9318

September 11, 2023

Columbia County Planning Commission

Re: Measure 49 Subdivision, Application No. S 23-01; Hearing, September 11, 2023

Dear Commissioners,

I represent Frank Hall and Gene Hester, neighbors residing across the road from the proposed new residential subdivision. I would like to offer response and input to the above application which I hope will be useful to the planning commissioners in handling and ultimately making a decision on the pending application.

First, A Measure 37/49 DLCD decision letter is not a free pass, nor does it imply a free ride. DLCD's letter opinion is just a provisional, conditioned approval allowing a successful claimant to proceed to apply for new residential lots and dwellings if all conditions of the letter (in compliance with Measure 37/49 requirements), all federal law requirements, and all state and local requirements reasonably necessary for protection of public health and safety are met. The applicant must, in this process, be required to make all improvements necessary to offset the added burden placed on surrounding properties, public systems and infrastructure and to ensure public health and safety. Unfortunately, the applicant has not yet met her burden and the hearing on this matter should either be continued to allow for the applicant and county staff to supplement and fully demonstrate satisfaction of all necessary requirements, or the present application should be denied and the applicant be allowed to apply again at a future date, if she believes she can satisfy all requirements necessary for citing a subdivision on this site.

It must be also noted at the outset that serious irregularities and questions appear to exist with respect to the deed records for the subject property and surrounding and already existing family owned lots. These issues are discussed in the submissions of Frank Hall, and below, but applicant should be allowed the opportunity to provide further evidence, to explain the facts and circumstances and to respond to the ownership timing questions so as to satisfy the board that she is truly entitled to the rights claimed in her application.

However, even if the applicant can demonstrate entitlement to 8 lots, and that she has a right to site all 8 on the proposed parcel, all standards relating to public health and safety still apply. Cite DLCD order and ORS and/or OAR,

Although not mentioned by the applicant nor staff in the staff report, Columbia County Zoning Ordinance section 1450 is triggered for this application and is fully applicable as an applicable approval standard, regardless of Measure 37/49 status or conditional DLCD approval because it is reasonably necessary to protect public health and safety. Section 1450 provides in relevant part:

> Transportation Impact Analysis: A Transportation Impact Analysis (TIA) must be submitted with a land use application if the proposal is expected to involve one or more of the conditions in 1450.1 (below) in order to minimize impacts on and protect transportation facilities, consistent with Section 660-012-0045(2)(b) and (e) of the State Transportation Planning Rule.
> .1 Applicability – A TIA shall be required to be submitted to the County with a land use application if the proposal is expected to involve one (1) or more of the following:
>
> > A. Changes in land use designation, or zoning designation that will generate more vehicle trip ends.
> > B. Projected increase in trip generation of 25 or more trips during either the AM or PM peak hour, or more than 400 daily trips.
> > C. Potential impacts to intersection operations.
> > D. Potential impacts to residential areas or local roadways, including any non- residential development that will generate traffic through a residential zone.
> >
> > ***
> >
> > F. The location of an existing or proposed access driveway does not meet minimum spacing or sight distance requirements, or is located where vehicles entering or leaving the property are restricted, or such vehicles are likely to queue or hesitate at an approach or access connection, thereby creating a safety hazard.
> > G. A change in internal traffic patterns may cause safety concerns.
> > H. A TIA is required by ODOT pursuant with OAR 734-051.

Any <u>one</u> of the conditions above trigger the need for a transportation impact study (traffic study). The applicant's subdivision application involves most if not <u>all</u> of the above. This application involves the functional equivalent of a change in zoning or land use designation for these proposed new lots from FA_80 to Residential. The addition of 8 new residential households would seem easily to exceed the 25 daily peak trip threshold

for triggering a full study. It would seem the addition of 8 households, and associated trips will easily impact both the local roadway and the operations of both the Tide Creek Road/Hwy 30 intersection and operations at the new intersection of Tide Creek Road and the new private road. It could well be that the location of an existing or proposed access driveway does not meet minimum spacing or sight distance requirements or will be located where vehicles entering or leaving the property are restricted, or such vehicles are likely to queue or hesitate at an approach or access connection, thereby creating a safety hazard. There will be brand new internal traffic patterns which should be assessed. Finally, although a TIA may not directly be required by ODOT, one could easily be triggered if the traffic engineer or the county determine that any changes will need to be made to the Hwy 30/Tide Creek Road intersection to safely accommodate traffic generated by the newly proposed subdivision.

The commission cannot legally not approve this application without requiring a TIA. Traffic safety concerns are extremely important, especially for the area in which the new subdivision is proposed. Gene Hester and other concerned neighbors provide evidence of both the very poor state of Tide Creek Road close to the proposed subdivision (See first and second pages of photos attached to this letter), but also the extreme danger at the Hwy 30/Tide Creek Road intersection (see third page of photos depicting the intersection and remaining evidence after yet another fatal crash there just last week). The intersection is extremely dangerous due to very poor current visibility and design, resulting in predictably numerous and regular accidents. At least 8 serous crashes and 11 total crashes at ofr near the intersection from 2016 through 2021 (See map and date compiled from ODot for this intersection) and another __ crashes in 2022, the last year data is readily available.

Section 1005 (a) cited by staff, but then not applied or required:
". . . no subdivision or partition shall be approved unless the development has at least 50 feet of frontage on an existing public street and otherwise complies with County Road Standards and Specifications in effect at the time of development . . .

Similarly under Section 1005 (h), if Tide Creek Road is an arterial (even a minor arterial), additional design elements, including prohibiting direct lot access, must be considered and possibly imposed in in the interests of public safety. Unfortunately, no traffic study has been required or volunteered, and it would be reckless to greenlight this project without a full TIA with analysis of the current and anticipated conditions and coming from the expertise of qualified traffic engineers.

With respect to irregularities in the deed records, without clarification and additional evidence from the applicant, it appears and may be that applicant never truly qualified for measure 37 relief on this parcel (Lot 400). DLCD merely indicated that county records reflect the applicant was the owner at the time of Making the M37/49 claims, and that according to county property records, the applicant "acquired" the property in 1965. DLCD made no finding of continuous ownership between 1965 and the present. The applicant for purposes of this present application submits a 1966 deed on which she apparently tries to claim ownership from before zoning was applied to the parcel, ignoring that she

supposedly already owned the property since 1965, ignoring the fact that the deed of record for the property was also created in 1966, and vested tile of record in the applicant's mother's name, not hers, for the intervening from 1966 to 2006! Without explanation, which opponents respectfully request from the applicant, the purported other 1966 on which applicant apparently now relies was not recorded until 2006 not long before the applicant asserted rights under M37. Utterly perplexing and potentially very problematic. See and compare all three deeds attached. The applicant must explain the existence, timing and circumstances surrounding the alleged execution and the recording of these deeds.

Similarly, irregularities appear to attend the deeds with respect to contiguous parcels and proper eligible lot count under the standards of Measure 49, which must be applied to the subject lot, and all contiguous lots as they existed at the time of the Measure 37/49 claims and authorization. Specifically, and as will be set forth in my clients' own submissions, the county property records seem to suggest that property in the same ownership at the time of DLCD authorization, i.e., Lot 401, et seq., was only recently transferred as separate lots to the applicant's son and daughter, i.e., in 2021 and 2022. If applicant held more than one existing lot as the property on which Measure 37/49 relief was sought, or if she owned any other property adjacent (touching, contiguous with such Measure 37/49 claim property) then those additional internal or contiguous lots must be considered and reduced from the number of lots and/or homesites available on Lot 400. Contiguous parcels/properties apparently existed at time of DLCD letter. 2021 and 2022 transfer into relative's names cannot create new rights to additional lots or homesites. Again, the applicant should be given an opportunity to explain the 2021 and 2022 transfers and the existence of other adjacent properties or additional or contiguous lots in the same ownership before those or any other transfer after the M37/48 claims were asserted and DLCD issued its letter. DLCD authorizations fully contemplate further proof and proceedings at the local government level, triggering the need for further analysis under Measure 37/49 and possibly resulting reduction of new lots and/or homesites tentatively permitted.

Inadequate water supply triggers also concerns for human safety in at least two ways, needed sufficiency for human hygiene and consumption and sufficient flow for fire suppression. It may be that only a neighborhood water system, with adequate flow for all residents and fire suppression purposes. Sufficient supply is not only essential for these new residents, but also for the existing residents once they are all pulling from the same strained groundwater aquifers. The well water sufficiency issues and serious non-considered realities are fully addressed in Frank Hall's submissions. Neither the well supply, the septic systems , perc tests, wetlands issues nor drainage issues should be deferred for later consideration or as delayed conditions. Clearly public health and safety issues are implicated and are relevant to the public hearing portion of this process.

The application fails to meet the applicant's burden of proof as presently submitted. Respectfully, as additional time is available on the 150-day clock, and in the interests of efficiency, the applicant should be given a postponement of this hearing of at least one month to provide a TIA and to provide additional evidence, explanations and argument supporting her application particularly as to all points raised above, if no postponement is made, the application should be denied and my clients ask for the record to be left open for 7 days for the submission of additional evidence and argument.

Thank you to all of the commissioners for their service, valuable time and attention to this matter.

Very truly yours,

___/S/_____
Thomas H. Cutler