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Of Counsel

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Linn County Board of Commissioner
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RE: Case No. PLN-2022-00807

RE: Applicant Final Legal Argument, Linn County Case PLN-2022-00807

I. Introduction.

The City of Millersburg (herein the "City" or "Applicant") provides the following final legal argument regarding the City's proposed urban growth boundary exchange and corresponding Linn County Comprehensive Plan (Plan) map amendment and Zoning map amendment under Linn County Case No. PLN-2022-00807. This memorandum summarizes the issues and concerns raised by parties submitting testimony opposing the proposal and the City's responses.

II. UGB exchanges or swaps do not require the City to demonstrate an additional need for industrial land.

ORS 197.320A(7) provides "Notwithstanding any other provision of this section, the commission may adopt rules that specify circumstances under which a city may exchange land within the urban growth boundary of the city for land that is outside of the urban growth boundary and that is designed to avoid adverse effects of an exchange on agricultural or forest operations in the surrounding area." Land Conservation and Development Commission (LCDC) adopted and amended OAR 660-024-0070 to implement ORS 197A.300 - 197A.325. Conformance with OAR 660-024-0070 addresses the City's obligations under ORS 197.320A as a matter of law.

OAR 660-024-0070 provides in relevant part:

"(1) A local government may adjust the UGB at any time to better achieve the purposes of Goal 14 and this division. Such adjustment may occur by adding or removing land from the UGB, or by exchanging land inside the UGB for land

outside the UGB. *** The requirements of Goal 14 and this division [and ORS 197.298] apply when land is added to the UGB, including land added in exchange for land removed. *** If a local government exchanges land inside the UGB for land outside the UGB, the applicable local government must adopt appropriate rural zoning designations for the land removed from the UGB prior to or at the time of adoption of the UGB amendment and must apply applicable location and priority provisions of OAR 660-024-0060 through 660-020-0067.

(3) Notwithstanding sections (1) and (2) of this rule, a local government considering an exchange of land may rely on the land needs analysis that provided a basis for its current acknowledged plan, rather than adopting a new need analysis, provided:

(a) The amount of buildable land added to the UGB to meet:

(B) The amount of employment land added to the UGB to meet an employment need is substantially equivalent to the amount of employment land removed, and”

As required by the rule, Applicant has provided evidence demonstrating compliance with Goal 14, including the location and priority provisions of OAR 660-024-0060 through 660-020-0067. See Applicant's original submittal materials, including the alternative site analysis and Applicant's supplemental materials dated February 14, 2023. However, Applicant need not demonstrate additional need for employment lands so long as the “amount of employment land added to the UGB to meet employment need is substantially equivalent to the amount of employment land removed.” The text ORS 197.320A(7) delegates authority to LCDC to adopt rules superseding ORS 197.320A (1) through (6) in the cases of UGB exchanges and swaps. The text OAR 660-024-0070(3) supersedes the text of OAR 660-024-0070(1) and (2), and therefore, the City may rely on the original determination of the amount of land needed in the original adoption of the comprehensive plan map. So long as the *amount* of lands exchanged are substantially similar, Applicant need not provide new evidence of a deficit of employment lands or other evidence of *need* as suggested by many opponents. The need for the current amount of industrial land was already established through the original UGB acknowledgment process. Such comments call for a misapplication and misinterpretation of state law.

III. The City demonstrated that all three alternative sites are predominantly high value soils and prime or unique soils.

OAR 660-024-0067 provides in part the UGB priority and location of the criteria for UGB exchange. In evaluating the property to be included in the exchange, the City must begin with the highest priority (out of a possible four priorities) “and select for inclusion in the UGB as much of the suitable land in that priority as necessary to satisfy the need.” OAR 660-024-0067. Here, the need is to provide approximately the same amount of acreage of industrial land as originally approved by the City, County, and LCDC through the acknowledgement process of the original UGB.

The City identified three possible alternative sites. No party identified any other possible alternative site. All three alternative sites are predominantly high-value farmland *and* prime or unique soils. See the City's supplemental alternative site analysis with detailed information regarding soil capability and supporting testimony dated February 14, 2023 from Mr. Paul Kuehne

testifying he installed tile and drainage on the amity soils on Alternative Site 3. Therefore, all three alternative sites are the fourth priority, and the City may move forward applying the remaining boundary location factors and select the land for inclusion amongst these three alternatives.

The City's alternative site analysis described such factors including a comparative of the "relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary location." Opponents identified no other property or basis for challenging the City's evaluation of the remaining UGB location factors. The City's ultimate conclusion was that Site B (i.e., Alternative Site 3) was best suited to include in the UGB under the Goal 14 location factors. This conclusion follows the applicable state laws and is supported by substantial evidence in the record.

IV. The land being removed from the UGB need not be comprised of predominantly high value or prime or unique soils.

Opponents have argued that the property within the City to be removed from the UGB (Site A) is not comprised of predominantly high value or prime or unique soils. These comments are largely inaccurate. The City's supplemental soil data demonstrated that Site A is predominantly high-value soil and can be predominantly prime farmland if irrigated. Irrigation is feasible according to testimony from the neighboring farmer, Mr. Kuehne, who has irrigation rights that can be transferred from the nearby farm (Site B). Therefore, Site B is both comprised of soils that are predominantly high value and may be prime farmland.

However, these comments are all beside the point. Opponents have identified no applicable criterion requiring the land to be removed from the UGB to be subject to the land priority requirements of OAR 660-0240067 or any other provision requiring the land to be removed from the UGB to have any particular soil capacity. Comments about the lack of equality in soil types between the land being farmed and the land to be removed are not related to any approval criterion. Therefore, they cannot be a basis for denial of the request.

V. The amendment will be compatible with adjacent uses and will not adversely impact the overall land use pattern in the area.

The City provided nine (9) pages of detailed findings explaining how the City's development regulations will make sure the amendment will be compatible with the surrounding uses and not adversely impact the land use pattern in the area. Future development must follow the City's site plan review and/or conditional use criteria, which are land use decisions for which public notice will be provided. These decisions will require evidence of compatibility with surrounding use. Applicant has evaluated the surrounding farm operations and likely impacts from industrial uses such as noise, lighting, and traffic. These future possible impacts are not such that will likely have a significant impact on the surrounding grass seed, hay, forage, or other current farm uses. Applicant's site plan review process will require conditions of approval to mitigate any unreasonable impacts on surrounding properties. The City's review is much greater than the review of many impactful farm uses allowed as a matter of law without site plan review. For example, dairies, chicken farms, and farm good distribution facilities create high levels of odors, water usage, and traffic with no land use review. Opponents' comments do not rebut the evidence provided by Applicant. Applicant has provided substantial evidence to satisfy LCC Section 921.874(A)(2) Linn County Comprehensive Plan 905.610(7).

Opponents generally argue that any loss of farmland will result in lost opportunities for future farming, and any expansion of the City's UGB will negatively affect the farming industry. Opponents ask the County to adopt a moratorium on all UGB expansions. Such an interpretation contradicts the County's precedent in acknowledging that the burden of proof is not demonstrating there will be no impacts, but no significant adverse impacts. Such an interpretation would contravene the state's UGB process. The County cannot adopt such a misinterpretation and misapplication of state law.

Conclusion

The City requests the County to approve the proposal and adopt findings of fact and conclusions of law consistent with the comments of the City in this letter.