

February 3, 2022

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Mayor Ted Wheeler and City Commissioners  
City Hall  
1221 SW Fourth Avenue, Room 340  
Portland, OR 97204

**Re: Environmental Overlay Zone Correction Project - Application of new development standards to new septic systems**

Dear Mayor Wheeler and Commissioners:

This office represents Joseph W. Angel regarding his real property located at 5100 NW Skyline Blvd. (the “Property”) within the Northwest Hills Plan District. The purpose of this testimony is to request the Council’s consideration of a limited modification to the Commission’s recommendation for revised language in 33.140.155 relating to the review of septic systems located in Environmental overlay zones. Specifically, the current recommended language allows approval of repair and replacement of septic system under specific environmental standards as an alternative to full Environmental Review proceedings, and our request is to expand the eligibility for such plan check review to new septic systems where public sewer service cannot be provided by the City. Our proposed revised Code language is set forth below in red:

*“33.430.155 Standards for Repair and Replacement of Existing Septic Systems and for New Septic Systems where Public Sewer Service is reasonably not available.” The following standards apply to the repair and replacement of an existing septic system and to the installation of a new septic system. The following standards apply to the repair and replacement of an existing septic system. All of the standards must be met.*

If enacted, the remainder of 33.140.155 including the prescriptive standards recommended by the Commission will remain the same.

The Property, which was annexed to the City in 1971, consists of 48 contiguous acres comprised of five parcels in single ownership located entirely within the City of Portland. The Property is zoned RF – Residential Farm Forest and the only portion of the Property included within the Metro Urban Growth Boundary (the “UGB”) is a two-acre segment lying across Skyline Blvd from the remaining 46 acres. This remaining 46 acres have been designated as Rural Reserve by

Multnomah County, which has the effect of precluding any potential inclusion of this acreage within the UGB for a minimum of 50 years.

The history of circumstances involving the provision of City services the Property provides useful context for this request. In approximately 1961, the City offered to provide public water and sewer services to the owner of the Property and water service was installed in 1965. In 1971, the Property was annexed to the City based, in large part, upon the City's commitment to provide additional City services. Unfortunately, the extension sewer service to the vicinity of the Property was left unresolved and the Metro urban growth boundary adopted following years of litigation resulted in this very limited area within the City limits along Skyline Blvd being outside the final UGB. Since public sewer service cannot be extended to lands lying outside an acknowledged UGB as a matter of state law, this Property and certain neighboring properties located in the Northwest Hills Plan District and designated Rural Reserve are among the very few properties in the City which cannot be served by public sewer and thus must rely on septic systems for all uses allowed under current zoning designations.

Taken together, the unique land use regulatory and policy considerations applied to Mr. Angel's property on NW Skyline confirm that future residential uses will be dependent upon the approval and construction of one or more septic systems, subject, of course, to compliance with all applicable City and state requirements. Since approximately 60% of the 46 acres carries a combination of Environmental Conservation and Environmental Preservation overlay zone designations, it also is apparent that any new septic systems required to serve future residential uses under the current R-F base zone designation will be required to conform to applicable Environmental Overlay zone standards in the same manner as required for the repair and replacement of an existing septic system within this immediate area. Under current E-zone requirements, full Environmental Review under the General Development Standards set forth in 33.430.140 is required for all development in the environmental zones unless the proposed development is included within seven sub-categories of development as described at 33.430.150-195 and these alternate standards are met. Since neither the replacement or repair of existing septic systems or the installation of a new system are eligible for the more efficient plan check review available under these sub-categories, full Environmental review is required today for all development activities associated with septic systems in the NW Skyline area.

The Bureau of Planning and Sustainability has identified this opportunity for permitting efficiency and included a recommendation to the Planning Commission and the City Council that the repair and replacement of septic systems be included as a new sub-category with pre-determined development standards which, if met, eliminates the need for full Environmental Review. This proposed new code language set forth at page 62 of the Recommended Draft before the Council provides as follows:

*“33.430.155 Standards for Repair and Replacement of Existing Septic Systems The following standards apply to the repair and replacement of an existing septic system. All of the standards must be met.*

*A. The proposed disturbance area is no greater than 2,000 square feet;*

*B. No trees greater than 6 inches in diameter may be removed with the exception of nuisance species trees. Nuisance species trees 6 inches in diameter or larger that are removed must be replaced with one tree meeting the standard of 33.430.140.K;*

*C. The proposed disturbance area is located at least 50 feet from stream top-of-bank or wetlands; and*

*D. The proposed disturbance area is replanted with a minimum of eight ground cover plants per 10 square feet. The ground cover plants must be a minimum size of four inch pots and must be native species listed in the Portland Plant List”.*

In the event that these standards are not met, Environmental review will be required as under the current Code provisions. Among other benefits, the practical result of this proposed amendments is to provide the applicant with substantial incentive to design the requires septic system to comply with these standards, which are designed to minimizes potential impacts to inventoried natural resources.

Our concern is that these proposed amendments as currently drafted do not include the installation of a new septic system, even though the nature of the proposed improvement and the potential impacts associated with a new system are virtually identical to the design and potential impacts of a replacement system and both systems require a new location. Further, there are no apparent distinctions in these relative objective standards which would require different application to a new septic system. While there may be a policy consideration to not facilitate or encourage new septic systems within environmental zones, our practical experience suggests that few landowners would elect to undertake the additional cost, construction and on-going maintenance requirements associated with a septic system if public sewer service is available. For the very limited number of property owners such as Mr. Angel who have no alternative due to the lack of any realistic access to public sewer service, the addition of new systems to the amended Code provision serves the public interest of encouraging system designs and locations which present the least potential for adverse resource impacts via the prescriptive standards.

In closing, we respectfully request the Council’s consideration of the following alternate language for proposed new Section 33.430.155:

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Again, the remainder of 33.140.155 including the prescriptive development standards recommended by the Commission will remain the same.

Under the proposed revisions to the current recommendation, new septic systems can be approved during the plan check process if the applicant demonstrates that (1) the proposed system complies with the new prescribed development standards and (2) public sewer service is reasonably not available.

Thank you for your consideration and we look forward to the opportunity to answer questions during the upcoming public hearing.

Sincerely,



Steven L. Pfeiffer

SLP:rsr

cc: Daniel Soebbing, BPS  
Client