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M E M O R A N D U M

To: Gladstone Planning Commission

From: Jeffrey L. Kleinman

Date: March 14, 2014

Re: Z0017-14-CP and Z0018-14-Z (Comprehensive Plan Amendment from Single Family Residential to Open Space and Zone Change from Single Family Residential, R7.2 to Open Space, OS)

I. INTRODUCTION

I represent Ken Yielding of 7000 Oakridge Drive, Gladstone. Mr. Yielding resides along the fenceline of the former dog park in question. He has submitted his own letter and supporting photographic evidence for the record. While it operated, the dog park gave rise to severe adverse impacts upon the Yielding family, their ability to use and enjoy their property, and the condition of their property itself.

I made some initial comments at your February 18 hearing. At this time, I would like to explain in some detail how this application fails to comply with any of the relevant approval standards.

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II. FAILURE TO COMPLY WITH APPROVAL STANDARDS GOVERNING COMPREHENSIVE PLAN AMENDMENTS AND ZONE CHANGES

Gladstone Municipal Code (GMC) 17.68.050 establishes the threshold test for approval of plan amendments and zone changes, setting out the applicant's burden to show:

“ 17.68.050 Evidence supplied by applicant.

The applicant seeking a zoning map change pursuant to the provisions of Section 17.68.010 must show by a preponderance of the evidence all of the following, unless otherwise provided for in this title:

(1) Granting the request fulfills a public need, the greater departure from present development policies or land use patterns, the greater the burden of the applicant.

(2) The public need is best carried out by granting the petition for the proposed action, and that need is best served by granting the petition at this time.

(3) The proposed action is consistent with the Comprehensive Plan and Metro's Functional Plan (Metro Code 3.07).

(4) Proof of significant change in a neighborhood or community or a mistake in the planning or zoning for the property under consideration, when relevant.

(5) The property and affected area is presently provided with, or concurrent with development can be provided with, adequate public facilities, including, but not limited to, transportation systems.”

A. GMC 17.68.050(1)–Public Need.

No public need for an additional Open Space designation in the City has been demonstrated. Unlike many local jurisdictions, Gladstone is well endowed with existing OS lands, including park lands.¹ The City owns and operates the following parks, in addition to

¹GMC 17.06.375 defines Open Space: “‘Open space’ means land that is undeveloped and that is planned to remain so indefinitely. ‘Open space’ also refers to land zoned OS, Open Space District, and developed with uses identified in GMC Chapter 17.26 (OS open space district).”

GMC 17.26.020 explains the “applicability” of the Open Space Zoning District and states: “In addition to other specific areas which may be so zoned [by] the City Council, this district shall apply to all publicly owned park lands.”

three small ones not listed here:

- Dierickx Field, 2.27 acres.
- Gladstone Nature Park, approximately 10 acres.
- Glen Echo Wetland, 2.97 acres.
- High Rocks Park, 1.55 acres.
- Max Patterson Memorial City Park, 1.84 acres.
- Meldrum Bar Park, 85.37 acres.
- Nick Shannon Park, 0.6 acres.
- Olson Property, 3.50 acres.
- Ridgeway Tracts, 1.80 acres.

Nick Shannon Park already serves the immediate neighborhood, and the subject site itself provides additional, *de facto* open space for the neighborhood without the addition of an attractive nuisance in the form of an often-swampy dog park.

Perhaps the best indicator of the lack of public need for more park land or Open Space in Gladstone lies in the city's own files. In 2008, Moore Information carried out a survey of Gladstone voters at the City's behest. A copy of the resulting report to the City is attached hereto as Exhibit A.

When voters were asked what one thing the City could do to improve their quality of life, only two percent responded with "more/improved parks and recreation." (Moore, p. 8) The top vote getter was "improve road conditions/pave streets," at 12 percent. (*Id.*) Forty-nine percent of respondents rated traffic issues a major or minor problem in the City. (*Id.* at 11) This clearly raises the question of why the City would seek to draw more traffic to a

residential neighborhood in order to accommodate a use for which there is no public need.

No public need whatsoever for an additional Open Space designation has been demonstrated here.

B. GMC 17.68.050(2)-Public Need Best Served.

There is no evidence in the record before you that the “public need,” were it to exist, “is best carried out by granting the petition for the proposed action, and that need is best served by granting the petition at this time,” as required by GMC 17.68.050(2). This is true as to the requested OS designation itself, as well as to the specifically identified “need” for a dog park.

Evaluation of the application under this criterion requires an analysis of why the existing parks/Open Space listed above cannot accommodate an identified need, whether or not for the specifically noted “dog park.” That fundamental analysis has not been performed. As a result the applicant has not met the requisite burden of proof. Moreover, we would contend that any properly performed analysis would show that existing OS lands can fully meet any public need herein.

If public need were to exist and were to be “best carried out by granting the petition for the proposed action,” does the application or the record show “that need is best served by granting the petition at this time?” It does not. The residential neighborhood surrounding the subject site was fully built out, or very nearly so, in the early 1970's, before the Comprehensive Plan was adopted. It has not undergone measurable changes. Has there been a dramatic increase in the canine population as cat lovers moved elsewhere? If so, the record does not show it.

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C. GMC 17.68.050(3)–Consistency with the Comprehensive Plan and Metro’s Functional Plan (Metro Code 3.07)

The applicant has also failed to demonstrate compliance with the Gladstone Comprehensive Plan (GCP) and Metro Code 3.07 in at least the particulars addressed here. With respect to the GCP, we would note the longstanding rule that in the case of quasi-judicial plan amendments, “the proponent of the change has the burden of proving that the change in the plan map is consistent with the goals and policies expressed in the plan as a whole and that the change does not violate the specific provisions of any applicable statewide planning goal.” *South of Sunnyside Neighborhood League v. Board of Com'rs of Clackamas County*, 280 Or 3, 20, 569 P2d 1063 (1977). The application does identify the Statewide Planning Goals as containing additional approval standards, and we will address these here as well.

GLADSTONE COMPREHENSIVE PLAN

(1) Housing Policy 1.

The applicant has failed to explain how removing approximately 7.72 acres from the R-7.2 Single Family Residential Zoning District will “provide a choice of housing type, density and price range.”

(2) Housing Policy 3.

Similarly, the applicant has failed to explain how the proposed plan amendment and zone change will “promote the supply of adequate housing.” In fact, the City has already lost significant amounts of Residential Lands to redesignation for other uses. With respect to the City’s inventory of R-7.2 lands, we would make reference to Ordinance #1098 (1988), Ordinance #1110 (1989), and Ordinance #1112 (1989), all of which moved R-7.2 lands into non-residential zoning districts.

The City's May, 1979 Inventory of undivided, buildable R-7.2 lands, appended to the GCP, totaled just 77.6 acres *before* the reductions noted above. Removing the 7.72 acres in question here would give rise to a further reduction of 10 percent in this critical inventory, which was relied upon in the formulation of the GCP and in the City's showing of compliance with housing-related criteria.

METRO FUNCTIONAL PLAN (METRO CODE 3.07)

Title 1-Housing Capacity.

Approving this application would cause the City to violate Metro Code (MC) 3.07.120(C)(3) by changing its zoning map such that the City's minimum zoned capacity for housing would be reduced, without appropriately increasing minimum zoned capacity elsewhere. Contrary to the applicant's position, the reduction of minimum zoned capacity of the property in question, given its substantial size, would by no means have a negligible effect on the City's overall minimum zoned residential capacity under MC 3.07.120(E).

STATEWIDE PLANNING GOALS

Statewide Planning Goal 6-Air, Water and Land Resources Quality.

Goal 6 requires cities and counties to "maintain and improve the quality of the air, water and land resources of the state." For the reasons given in the testimony of Mr. Yielding, the history of the previously operated dog park shows that water quality was adversely affected by pooling and drainage of animal waste up to and upon adjacent residential property, resulting in jeopardy to public health.

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Statewide Planning Goal 10-Housing.

Goal 10 requires cities and counties to “provide for the housing needs of citizens of the state.” For the reasons identified above, granting this application would expressly violate this goal.

D. GMC 17.68.050(4)–No Proof of Change or Mistake

GMC 17.68.050(4) requires the applicant to demonstrate “[p]roof of significant change in a neighborhood or community or a mistake in the planning or zoning for the property under consideration * * *.” As discussed above, the neighborhood and surrounding community have scarcely changed at all since the date of original adoption of the Gladstone Comprehensive Plan. Moreover, there is no evidence of any mistake in the original planning and zoning for the site.

E. GMC 17.68.050(5)–Adequacy of Public Facilities

The applicant has failed to demonstrate that the property and affected area are presently provided with, or concurrent with development can be provided with, adequate public facilities. In this case, the record shows the subject site to be utterly inadequate in terms of drainage and the lack of a drainage system, to the extent it poses an active health hazard to residential neighbors.

We would point out here that in order to demonstrate compliance with this approval standard, the applicant would have to review, discuss, and evaluate all the prospective uses in the OS Zoning District allowed by GMC 17.26.030. That has not occurred here. With respect to the proposed dog park use and the listed allowed uses, the applicant would also need to demonstrate compliance with the Special Standards set out in GMC 17.26.050, including the following:

GMC 17.26.050 (1) “Compatibility. Open space uses shall be compatible with adjacent land uses.” For all the reasons explained by Mr. Yielding and other neighbors, the proposed dog park and the OS designation are entirely incompatible with the adjacent, residential land uses.

GMC 17.26.050(3) “Access and Parking. Vehicular traffic generated by open space use shall be provided with adequate access and parking facilities.” The facilities in question do not exist at the subject site, and no provision has been made for them. The evidence in the record makes clear that both the proposed dog park and the proposed redesignation itself would draw substantial additional traffic to and parking demand for this site, to the detriment of this residential neighborhood.

Again, the applicant has failed to meet its burden of proof as to key approval standards.

III. CONCLUSION

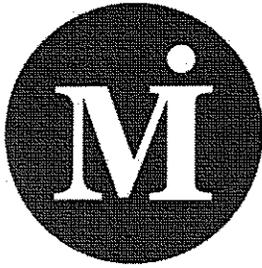
For all the reasons set out above, the applicant has not borne the substantial burden of proof required to justify the proposed comprehensive plan amendment and zone change.

This application must be denied.

Dated: March 14, 2014.

Respectfully submitted,


Jeffrey L. Kleinman, OSB #743726
Attorney for Kenneth Yielding



MOORE INFORMATION

OPINION RESEARCH • STRATEGIC ANALYSIS

CITY OF GLADSTONE VOTERS (N=300)
July 1-3 & 5-6, 2008

Hello, this is (FIRST AND LAST NAME). We are conducting a survey among voters regarding issues in the City of Gladstone and would like to include your views in our study. I assure you we are only seeking opinions and there will be no attempt to sell you anything or solicit a donation. The survey will take approximately ten minutes of your time.

1. In general, how would you rate the City of Gladstone as a place to live, as an excellent, good, average, below average or poor place to live?

excellent	50%
good	42%
Total excellent/good	92%
average	7%
Total below average/poor	1%
below average	*
poor	1%
don't know	*

2. Overall, how satisfied are you with the services provided by the City of Gladstone? Would you say you are very satisfied, somewhat satisfied, not too satisfied or not satisfied at all?

very satisfied	42%
somewhat satisfied	32%
Total satisfied	74%
Total not satisfied	18%
not too satisfied	16%
not satisfied at all	2%
don't know	8%

* Less than one-half of one percent

3. IF RESPONSE 1-2 (SATISFIED) IN Q2: Why do you say that? (RECORD RESPONSE VERBATIM, ACCEPT ONE REPNSE)

No problems/no complaints	25%
There's room for improvement	8%
Favorable/good place to live	8%
Lived here a long time	6%
Roads need improvement	5%
Services provided promptly/efficiently	5%
Good public safety/police department	4%
Beautification of the city/trash pick up	4%
Quality services provided	3%
Availability of services	3%
Do not receive/utilize services	2%
Know people that work for the services	2%
Need new library	1%
Need to increase police officers	1%
Small town atmosphere	1%
Helpful	1%
Proper budgeting	1%
Enjoy high school events	1%
Good area for raising children	1%
Good business	*
Reliable water services	*
Low crime rate	*
Sidewalks need repair	*
Worked/volunteered for them	*
Last minute water bills	*
Good Mayor	*
Family oriented	*
Conduct annual festivals	*
Need to improve traffic control	*
Positive senior benefit	*
Same as other cities	*
Refused	2%
None/nothing	7%
Don't know	6%

* Less than one-half of one percent

4. IF RESPONSE 3-4 (NOT SATISFIED) IN Q2: Why do you say that?
(RECORD RESPONSE VERBATIM, ACCEPT ONE REPOSE)

Satisfied/no problems	32%
Roads are in bad condition	11%
Room for improvement	9%
Could be cleaner	8%
Police department does not do a good job/inefficient	7%
Small town/not a lot to do	4%
Bad services	3%
They don't address the issues	3%
Medical care	2%
Government needs improvement	2%
Don't use services	2%
Schools/education needs improvement	2%
No care/concern for citizens	2%
Don't do anything about the kids	1%
Recycling services are good	1%
Need to combine services	1%
None/nothing	1%
Don't know	9%

5. If there were one thing the City of Gladstone could do to improve your quality of life, what would that be? (RECORD RESPONSE VERBATIM, ACCEPT ONE REPNSE)

Improve road conditions/pave streets	12%
Improve/expand library	3%
Lower taxes	3%
Update downtown area	2%
Increase number of police officers	2%
More/improved parks and recreation	2%
Clean up city/pick up trash	1%
Improve pedestrian walkways	1%
Lower fuel cost	1%
Increase business	1%
Improve infrastructure	1%
Encourage development	1%
Water issues	1%
Repair bridge	1%
Neighborhood watch	1%
More firefighters	1%
Dog control services	1%
New/more restaurants	1%
More traffic signals	1%
Increase CODES enforcement	1%
More parking	1%
More service from city employees	1%
Better traffic control/speeding	1%
Beautify city	*
Improve traffic congestion	*
Improve education/school system	*
Paid fire department	*
Paperboy is late	*
More green space	*
Improve local economy	*
Improved police station	*
Fireworks	*
Stop illegal immigration	*
Fire Mayor	*
Get rid of festivals	*
Recycling	*
Public transportation	*
Lower rates for services	*
Refused	1%
None/nothing	9%
Don't know	49%

* Less than one-half of one percent

INTRO Q6-7

Next, I would like to ask you to rate your level of satisfaction with each of the following services the City of Gladstone provides to its residents. For each, please tell me if you would say you are very satisfied, fairly satisfied, not too satisfied or not satisfied at all with that service.

SCALE

1. very satisfied
2. fairly satisfied
3. not too satisfied
4. not satisfied at all
5. (DON'T READ) don't know

ROTATE Q6-7

6. Gladstone Fire and Emergency Medical services

very satisfied	74%
fairly satisfied	18%
Total satisfied	92%
Total not satisfied	2%
not too satisfied	1%
not satisfied at all	*
don't know	6%

7. Gladstone Police services

very satisfied	62%
fairly satisfied	28%
Total satisfied	91%
Total not satisfied	5%
not too satisfied	4%
not satisfied at all	1%
don't know	5%

8. And thinking about these services provided by the City, have you ever had a personal experience with either Gladstone Fire and Emergency Medical services OR Gladstone Police services?

yes, Gladstone Fire and Emergency Medical services	17%
yes, Gladstone Police services	31%
yes, both	23%
Total yes	70%
no, neither	28%
don't know	2%

* Less than one-half of one percent

9. IF RESPONSE 1 OR 3 IN Q8: Would you rate your experience with Gladstone Fire and Emergency Medical services, as excellent, good, average, below average or poor?

excellent	76%
good	14%
Total excellent/good	90%
average	5%
Total below average/poor	4%
below average	4%
poor	1%
don't know	1%

10. IF RESPONSE 4-5 (BELOW/POOR) IN Q9: Why do you give that rating? (RECORD RESPONSE VERBATIM, ACCEPT THREE REPONSES)

Unprofessional	35%
Took too long	27%
Could not get through	24%
Volunteers don't have regular pay time	14%

11. IF RESPONSE 2 OR 3 IN Q8: Would you rate your experience with Gladstone Police services, as excellent, good, average, below average or poor?

excellent	55%
good	23%
Total excellent/good	78%
average	13%
Total below average/poor	9%
below average	6%
poor	3%
don't know	1%

12. IF RESPONSE 4-5 (BELOW/POOR) IN Q11: Why do you give that rating? (RECORD RESPONSE VERBATIM, ACCEPT THREE REPONSES)

Not efficient	33%
Use poor judgment	9%
None/nothing	7%
Don't know	50%

13. Thinking now about your own neighborhood, in the last two years, has your neighborhood become a better place to live, stayed about the same, or become a worse place to live?

better place to live	10%
stayed about the same	82%
worse place to live	8%
don't know	1%

INTRO Q14-22

Next, please tell me if the following issues are a problem in your neighborhood, or not. IF PROBLEM: Is that a major problem or a minor problem?

SCALE

1. major problem
2. minor problem
3. not a problem
4. (DON'T READ) don't know

ROTATE Q14-22

14. traffic issues, including speeding, failure to stop and failure to yield

major problem	18%
minor problem	31%
Total problem	49%
not a problem	50%
don't know	1%

19. burglary and theft

major problem	5%
minor problem	24%
Total problem	28%
not a problem	69%
don't know	2%

16. chronic noise disturbances

major problem	4%
minor problem	17%
Total problem	21%
not a problem	78%
don't know	1%

15. abandoned cars and junk cars

major problem	3%
minor problem	16%
Total problem	19%
not a problem	80%
don't know	2%

21.	drug use and addiction	
	major problem	5%
	minor problem	13%
	Total problem	19%
	not a problem	75%
	don't know	7%
22.	drug sales	
	major problem	4%
	minor problem	12%
	Total problem	15%
	not a problem	77%
	don't know	8%
20.	violence	
	major problem	2%
	minor problem	13%
	Total problem	14%
	not a problem	84%
	don't know	1%
18.	public drinking and intoxication	
	major problem	1%
	minor problem	12%
	Total problem	13%
	not a problem	86%
	don't know	1%
17.	graffiti	
	major problem	1%
	minor problem	9%
	Total problem	10%
	not a problem	88%
	don't know	2%

Thinking now about the upcoming November general election, here are three measures that Gladstone voters will be asked to vote on.

ROTATE Q23-24

23. There will (also) be a renewal of the Gladstone Fire Levy on the upcoming November ballot. The potential ballot title reads as follows:

"Five year local option tax for fire and medical services.

Shall Gladstone impose a tax of 31 cents per one-thousand dollars for five years beginning in 2009 through 2010 for fire and medical services? This measure may cause property taxes to increase more than 3%."

If the election were held today, would you vote "yes" to approve or "no" to oppose this levy?

IF YES/NO: Is that definitely yes/no or probably yes/no?

definitely yes	29%
probably yes	24%
Total yes	53%
don't know	14%
Total no	33%
probably no	14%
definitely no	18%

24. There will (also) be a renewal of the Gladstone Police Levy on the upcoming November ballot. The potential ballot title reads as follows:

"Five year local option tax for police services.

Shall Gladstone impose a tax of 68 cents per one-thousand dollars for five years beginning in 2009 through 2010 for police services? This measure may cause property taxes to increase more than 3%."

If the election were held today, would you vote "yes" to approve or "no" to oppose this levy?

IF YES/NO: Is that definitely yes/no or probably yes/no?

definitely yes	24%
probably yes	24%
Total yes	48%
don't know	13%
Total no	38%
probably no	16%
definitely no	22%

25. Next, would you vote for or against the formation of a countywide library service district that would provide stable, permanent funding for all public libraries in the county, including Gladstone, costing approximately 40 cents per thousand dollars of assessed home value, or approximately \$80 dollars per year for a home with an assessed value of \$200,000?

IF FOR/AGAINST: Is that definitely for/against or probably for/against?

definitely for	26%
probably for	26%
Total for	52%
don't know	12%
Total against	36%
probably against	16%
definitely against	21%

ROTATE Q26-27

26. The Gladstone Fire Department has two full-time employees, one of whose salary is paid with funds generated by the Fire Levy, and the rest of the Gladstone Fire Department firefighters are volunteers.

After hearing this, are you more likely or less likely to vote for the Fire Levy?
IF MORE/LESS LIKELY: Is that much more/less likely or somewhat more/less likely?

much more likely	27%
somewhat more likely	33%
Total more likely	60%
don't know	22%
Total less likely	17%
somewhat less likely	6%
much less likely	11%

27. There are nine police officers assigned to 24-hour patrol in the City of Gladstone. Two of these officers, plus the Gladstone Public School Resource officer, are paid with funds generated by the Police Levy.

After hearing this, are you more likely or less likely to vote for the Police Levy? IF MORE/LESS LIKELY: Is that much more/less likely or somewhat more/less likely?

much more likely	26%
somewhat more likely	29%
Total more likely	55%
don't know	21%
Total less likely	24%
somewhat less likely	12%
much less likely	12%

28. Passage of the police and fire levies does not impose a new tax – these are just continuations of the levies that were passed in 2002 and expire next year.

After hearing this, are you more likely or less likely to vote for the police and fire levies? IF MORE/LESS LIKELY: Is that much more/less likely or somewhat more/less likely?

much more likely	37%
somewhat more likely	30%
Total more likely	67%
don't know	17%
Total less likely	16%
somewhat less likely	7%
much less likely	9%

29. Currently, 60% of the Gladstone Public Library operating budget comes from the County General Fund. In the next five years, these funds will be eliminated.

After hearing this, are you more likely or less likely to vote for the countywide library service district? IF MORE/LESS LIKELY: Is that much more/less likely or somewhat more/less likely?

much more likely	29%
somewhat more likely	25%
Total more likely	54%
don't know	17%
Total less likely	28%
somewhat less likely	14%
much less likely	15%

30. Next, the Gladstone Fire Department has a new fire truck and has finished construction on an addition to the station. If the Fire Department had an open house inviting the public to the station, how likely would you be to attend? (READ 1-4, 4-1)

very likely	28%
somewhat likely	34%
Total likely	62%
Total not likely	37%
not too likely	19%
not likely at all	18%
don't know	1%

Now a few questions for statistical purposes.

31. How often do you or someone in your household visit the Gladstone Public Library? (READ 1-6, 6-1)
- | | |
|---------------------------|-----|
| at least once a week | 21% |
| at least once a month | 19% |
| every few months | 8% |
| a few times a year | 13% |
| once a year or less often | 17% |
| never | 20% |
| don't know | 2% |
32. What is your approximate age, please?
- | | |
|-------|-----|
| 18-34 | 12% |
| 35-44 | 10% |
| 45-54 | 17% |
| 55-59 | 15% |
| 60-64 | 9% |
| 65+ | 36% |
| NA | 1% |
33. Gender (BY OBSERVATION)
- | | |
|--------|-----|
| male | 49% |
| female | 51% |
34. Party Registration (FROM LIST)
- | | |
|-------------------|-----|
| Republican | 34% |
| Democrat | 41% |
| Independent/other | 25% |
35. Vote History (FROM LIST)
36. Precinct (FROM LIST)