May 13, 2021

Marion County Planning Division
5155 Silverton Rd., NE
Salem, OR 97305

RE: CU21-004 (YWAM) - Request For Denial – Response to Applicant's Post Hearing Memo (Exhibit 117) - (Part 5)

To Marion County Planning Division:

Friends of Marion County is an independent 501(c) (3) farmland protection organization founded in 1998. Our mission is to protect farm and forestland, parks, and open space in Marion County.

We oppose and request denial of the application by Youth With A Mission for a conditional use phased remodel expansion of the existing campus on a 31.72 acre parcel in an AR (Acreage Residential) zone located at 7085 Battle Creek Road SE, Salem. (T8S; R3W; Section 25B; Tax lots 100, 300, 400, 500, 600, 700, 800, 1001).

In addition to our comments submitted February 23, 2021, March 9, 2021, March 11, 2021, and April 29, 2021 we now offer a response to Applicant's Post Hearing Memo (Exhibit 117) dated April 29, 2021.

Applicant proposes the following supplemental route to and from the north end of the property connecting to Battle Creek Road. Applicant's Response Memo, Detail of Site Plan, pgs. 6 and 7 states[1]:

"In response to several comments made by opponents and by the Turner Fire District, Applicant made the following revisions to the site plan:

b. Added an additional section of Battle Creek through the parcel along the western property boundary.
c. Widened the access road and added additional turnaround for fire access as well as adding emergency access along the northern property line."

The Applicant's Site Plan dated August 2020 does not indicate the exact location of the additional turnaround for fire access and emergency access along the northern property line.

Applicant's Master Site Plan[2] (arrows added to identify locations) includes the addition of a gated emergency fire access driveway but does not address our comments concerning emergency evacuation from the west side of Battle Creek. In our comments of April 29, 2021 (Part 4) we described in depth the problems of evacuating persons from the parcels located on the west side of Battle Creek. The Applicant's emergency gated driveway is distant from the area west of Battle Creek itself where a large number of persons may become stranded during a flood or other emergency event which would require emergency vehicles access across the narrow YWAM Bridge. It is particularly important now that the Applicant has pictured three new 2-story dormitory buildings located on the west side of Battle Creek. Applicant states that this plan is conceptual and provides sufficient detail for the permit process, however the revised site plan is a key component of the application since it identifies the three 2-story dormitory structures on the west side of the waterway and therefore cannot be revised at the time of building permit approvals. The location of these residences is a key to any emergency evacuation plan included in the application.

As described in our April 29, 2021 comments it is incumbent upon the Applicant to provide an Evacuation Plan containing the associated physical improvements which would provide for the health and safety of residents and visitors to the site during an emergency.

Conclusion

The Applicant's Response Memo of April 29, 2021 continues to ignore the necessity of protecting residents and visitors during an emergency event, again ignoring its responsibilities. Marion County should not approve any expansion of the facility without requiring adequate emergency evacuation routes and plans for ALL personnel on the site, including those on the west side of the waterway.

In light of the issues and evidence presented here Friends of Marion County opposes this application and requests a denial.

Sincerely,

Roger Kaye, President
rkaye2@gmail.com
(503)743-4567

EXHIBITS:

1. Applicant's Response Memo, April 29, 2021, Detail of Site Plan, pgs. 6 and 7

2. Youth With A Mission, Master Site Plan, April 29, 2021, marked with arrows showing the "Existing Driveway" and "Gated Emergency Fire Access Only" locations

development with various service providers rounding up or down based on the calculations made. This has understandably created some confusion within the narrative, which Applicant seeks to clarify now. The overall capacity of the expanded YWAM campus, upon full buildout of all phases of the proposed development is a maximum of 406 residential users, which includes both students and staff residing on the Property and a maximum of 60 staff members who reside off-site but may be on-site for up to eight (8) hours a day. There will also be capacity for an additional 30 off-site users, accounting for unaffiliated community groups using the ropes course that are on-site for less than three hours at a time. Applicant addresses whether this impacts its feasibility analysis, below.

2. Detail on Site Plan

The opposition alleges that there is not a sufficient level of detail on Applicant's proposed site plan. Applicant's site plan is a concept plan designed to obtain land use approval through the conditional use process. Applicant's site plan shows sufficient detail for the conditional use permit process and development on the Property will be reviewed for additional detail through Marion County's building permit process.

In response to several comments made by opponents and by the Turner Fire District, Applicant made the following revisions to the site plan:

a. Revised the proposed RV Loop and Proposed Staff Housing so that it is outside of the 100-foot special setback.

b. Added an additional section of Battle Creek through the parcel along the western property boundary.

c. Widened the access road and added additional turnaround for fire access as well as adding emergency access along the northern property line.

d. Provided the location of the two wells that serve the Property as well as the location of the abandoned well.

e. Provided a label for the existing Director's Residence on Tax Lot 800.

The revised site plan has been submitted along with this supplemental statement. The Property is developed with an existing septic system that will be decommissioned as part of the proposed development. The site plan identifies a sports court that will be developed in a later phase of the development, once the existing septic drain field has been decommissioned. Applicant will not be developing over an operational drain field.

3. Traffic Impact

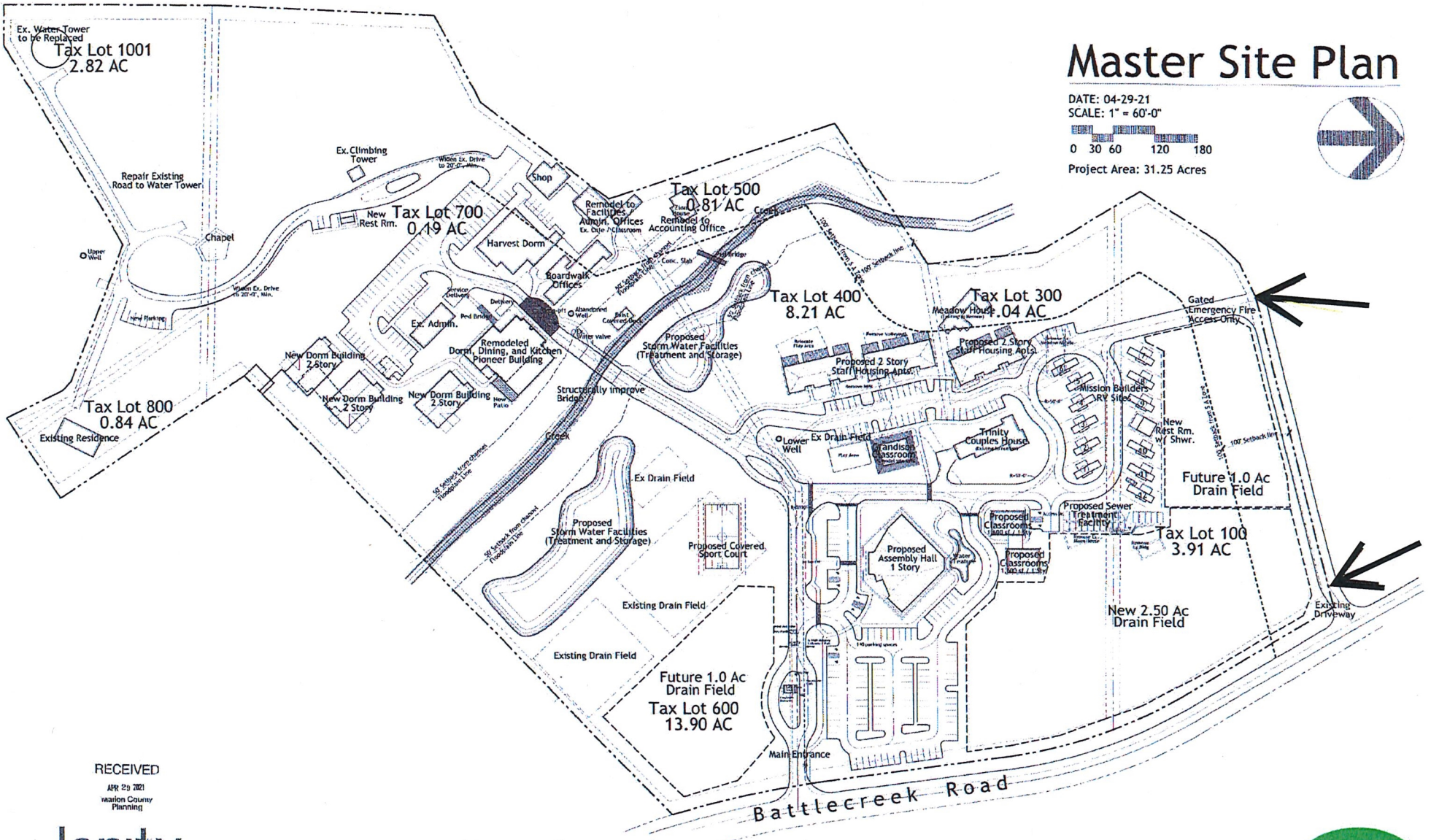
As part of this response, Applicant has provided a response letter prepared by

Master Site Plan

DATE: 04-29-21
SCALE: 1" = 60'-0"

0 30 60 120 180

Project Area: 31.25 Acres



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Youth with a Mission

Salem, Oregon

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BEFORE THE HEARINGS OFFICER

FOR MARION COUNTY

In the Matter of the Application of: Youth With A Mission For a Conditional Use to Expand its Campus on property zoned Acreage Residential and located at 7085 Battle Creek Road SE, Salem consisting of 31.72 acres	Case No. CU 21-004 **OPPOSITION REBUTTAL MEMORANDUM**

COMES NOW the Rural Battle Creek Road Association, Inc., by and through its attorney, Wallace W. Lien, and does hereby submit for the official record in the above entitled matter its Opposition Rebuttal Memorandum filed pursuant to the timelines established at the April 1, 2021 Public Hearing. This Memorandum is intended to support, not replace all of the evidence and information and positions taken by my client directly, or by its members. Those are thoughtful and engaged comments that must be given great weight.

1. Ropes Course Never Approved

My client agrees with staff that the applicant is unlawfully operating a commercial business venture on the property in the form of what is called the "Ropes Course." Clear and convincing evidence was submitted at the April 1, 2021 Public Hearing that the Ropes Course was operated not by Youth With a Mission, but instead by Salem Ropes, LLC. The Articles of Organization of this commercial business indicate its purpose is to conduct, promote and facilitate business activity. Copies of the Business Registry and Articles of Organization were submitted into this Record.

In addition, this business entity operates a commercial website that can be accessed at www.salemropes.com. The business is advertised as being open to the public on a for hire basis, and the rates page from the website was also submitted into this Record.

When the Hearings Officer asked the planner at the April 1, 2021 Public Hearing about this business, the planner replied that the business was approved by the county. However, the planner has now researched the record on this property and found, as my client did, that no such approval for this

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use exists. The climbing tower that is depicted on the current proposed site plan was approved in Proposed Site Plan Amendment/Adjustment Case No. 99-1, a copy of which is in this Record, however that approval did not approve any commercial use of the property for the Ropes Course. The tower was to be used as one element of an already existing program that served only the students already on the property and in the program. See paragraphs 5 and 7 of Case No. 99-1.

Further, with the commercial nature of this operation, and its independent business status, as well as it being open to the public, this use is clearly not a related conference or residence facility to the religious activities of the applicant. By any sense, this independent commercial enterprise taking place on the subject property is unlawful as not permitted either outright or conditionally in the AR zone. Where a use is neither allowed outright or conditionally, it is considered to be a prohibited use. Applicant's apology that corporate structure was done to protect from liability is no excuse. When the applicant brings in the public for hire to use the facility, it becomes a commercial enterprise that is illegal in this zone regardless of the potential liability and the papering over it with a dummy corporation.

This unlawful use ongoing on the subject property creates a failure in jurisdiction over the matter by this Hearings Officer. First, the use is not allowed in the zone, has never been approved by Marion County, and is by all definitions, a prohibited use. As previously pointed out, MCZO 17.119.030 and 17.119.070(A) provide that the Hearings Officer may only hear and decide those cases where the proposed use is actually listed as conditionally allowed in the zone. Therefore, the Hearings Officer has no jurisdiction to consider this matter, and the application must be dismissed.

Further, the fact that the Ropes Course is an illegal activity on the subject property creates a current and ongoing violation of the AR zone allowed uses. Where there is a current violation of the land use code on the subject property that will not be corrected by this application, MCZO 17.110.680 mandates that no land use approval shall be granted for the land upon which the violation is occurring. The applicant has not included an application to correct this violation here, and since this use is not an allowed or conditional use in the AR zone, there is no way for this application to correct

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the violation in any event.

Staff refers to this violation as minor, and that the Hearings Officer has some latitude to weigh the violation as a piece of evidence in determining whether or not to approve the application. This is a total misinterpretation of MCZO 17.110.680 which is mandatory and leaves no room for judgment or weighing evidence or consideration in whether or not to approve the application. In case there is any doubt about the mandatory nature of MCZO 17.110.680, it is quoted here:

> *No permit for the use of land or structures or for the alteration or construction of any structure* ***shall be issued*** *and* ***no land use approval shall be granted*** *if the land for which the permit or approval is sought is being used in violation of any condition of approval of any land use action,* ***is in violation of local, state or federal law****, except federal laws related to marijuana, or is being used or has been divided in violation of the provisions of this title, unless issuance of the permit or land use approval would correct the violation.* Emphasis supplied.

Based on the mandates of MCZO 17.110.680, the Hearings Officer shall not approve this application, and therefore it must be dismissed or denied.[1]

2. RV Park is Also a Prohibited Use

This application seeks approval of a 12 space commercial RV park in the northwestern portion of the property that has heretofore been open space and green belt buffer for the complex. According to the proposed site plan, the RV park will be self contained with its own restrooms and shower facilities. The Staff Manual for the applicant, at page 6 (see Exhibit 109) provides that the RV park is fee based with the user paying a fee of $150 per month to the applicant. The proposed RV park is immediately adjacent to lands that are zoned Special Agriculture (SA) and are subject to the special 100' setback provided in MCZO 17.128.050.

An RV park is a specialized kind of use that is recognized by the MCZO as only being allowed in the Commercial zone. MCZO 17.145.020(I). There is no allowance in the AR zone for

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[1] MCZO 17.110.005(D) specifically provides that the word "shall" is mandatory and not directory. This is a clear statement that applies in this case and defeats the staff attempt at making MCZO 17.110.680 a discretionary tool in weighing evidence. Shall means shall, and the Hearings Officer must follow the mandates of this code.

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an RV park. There is no approval for an RV park stated in any of the several prior land use decisions, and even if such approval were to be inferred, it would be ineffectual since an RV park can not be allowed in this zone.

Staff references CU 81-15 and notes in the file to determine that 6 RV spaces were approved by Marion County, and as such constitute a non-conforming use. This reference is not accurate. CU 81-15 approved a conditional use, not a master plan for development. The uses that were approved within the project were enumerated at Paragraph 9 of the Findings, and no RV spaces were included in those findings. In any event, where a use (RV Park) is not allowed in the zone, no land use approval can allow that use regardless of how it is put. An RV Park has never been allowed in the AR zone going back to the beginning of zoning, therefore no past actions, staff letters, or land use decisions could lawfully allow an RV Park, and if it was purported that happened, the result would be an unlawful order that would not be enforceable and could not be used as precedent in this case. No matter how one looks at the RV Park proposed here, it is not allowed in the zone, is not and never has been a non-conforming use[2], and can not be approved here or now.

An RV park, under the circumstances proposed here where there are so many spaces and there is a site charge to the end user, can not be considered to be religious related housing. Where the site has stand alone housing as well as dormitory housing, an RV park is totally unnecessary and can not be considered to be a necessary related residence facility. This meaning of the MCZO is affirmed by the placement of RV parks only in the Commercial zone and not in the AR zone. In this case the specific reference to the RV park being allowed in the Commercial zone takes precedence over the tenuous argument that the RV park provides religious related residences.

Having an RV park on the subject property is an unlawful use in the AR zone. Use of this RV

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[2] A non-conforming use is one that was lawful at one time, and by changes to the land use regulations has become unlawful. The pre-existing legality allows the use to remain. Where the use was never legal in the first place it does not qualify for non-conforming use status. MCZO 17.110.405.

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park not free gratis, but according to applicant's Staff Manual (Exh 109) the RV user is not only charged $150.00 per month plus payment for the utilities used for the use of the RV pad, but are also charged a "hospitality fee" of $10 per night. By applicant's own admission, this RV park is a commercial venture, and is therefore illegal to be operated in the AR zone.

The placement of an RV park on the site, over and above the one storage space allowed by the code, constitutes a current and continuing violation of the provisions of the AR zone. Therefore, as with the Ropes Course, the RV park removes jurisdiction from the Hearings Officer to decide this application, leaving the only decision available as one of dismissal. MCZO 17.110.680.

3. Rural Harmony Is More Than Just Providing Water

At several points during the course of the public hearing, the Hearings Officer asked if the concept of rural harmony was simply a matter of finding that there was adequate water for the proposal. The answer is clearly NO. Rural harmony is a concept that embodies much, much more than just whether or not there is adequate water.

The mandatory approval criteria for this conditional use begins in MCZO 17.119.070(B) where the Hearings Officer must find that the proposal is in harmony with the purpose and intent of the AR zone. To do so the Hearings Officer must look to MCZO 17.128.010 which sets forth that purpose and intent. This section emphasizes the AR zone's rural residential nature and the accommodation for acreage homesite. Where such acreage residential homes are proposed, the water and septic capacity must be established without compromising the rural character of the neighborhood. Therefore, this first criteria suggests that maintaining the rural character of the area is of the utmost importance, and one of the ways to ensure that is to only allow uses that will not exceed the water and septic capability of the land.

The query does not end there however. The Hearings Officer is then mandated to review the additional six conditional use criteria found at MCZO 17.128.040. The first of these criteria is basically a repeat of MCZO 17.119.070(B) regarding harmony, but the remaining five criteria deal with the other issues of traffic, fire protection, rural services, watersheds, slopes, air and water quality,

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noise and groundwater. In order for a conditional use permit to be granted, affirmative findings based on substantial evidence in the Record, must be made on each and every one of the six criteria. Water is only one, and while it might be the most critical in this case, it alone does not decide this matter.

The Hearings Officer asked about Case No CU 81-15 which was a case I decided in 1981 when I was the Marion County Hearings Officer, and if water was not determined to be the only critical issue there. The answer is no, that was not the only reason that case was decided the way it was. In any event, prior decisions may be instructive but certainly are not *stare decisis* as to future decisions. It must be remembered that in 1981 land use law was in its infancy, and we didn't have the 40 years of case law we now have. We dealt only with issues raised by the parties, and were much more practical than we are in the legalistic world of the 2020's. The agricultural nature of the facility, and its training of young missionaries in sustainable agricultural practices to then take to third world countries was a significant reason for approval of this site. It must be noted that while water and septic issues were discussed in this Order, none of the other approval criteria were specifically referenced. It is not that compliance with the other issues was not found, it was specifically determined that the applicant then had met its burden under MCZO Chapters 119 and 128. It was that none of the other criteria were raised as issues by any party, which in those days meant you didn't spend any time discussing something in a decision that was not contested.

On a personal note, since my participation in CU 81-15 has been raised, I believe the applicant in its 1981 incarnation did meet the criteria. For the most part the facilities were already in place from the former use. The agricultural training seemed to be perfect to fit in the rural character of the area, such that it would be harmonious with surrounding uses. That the level of activity proposed 40 years ago could be accommodated with the then available water and septic systems in place was important, but not the singular reason for approval. I can say unequivocally, had the current proposal been brought to me 40 years ago, I would have denied it outright.

4. Water Issues Not Resolved or Resolvable

My client, and its members in their own personal submissions to this Record have pointed out

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the many critical issues with this proposal taking so much more water from the aquifer to serve what is becoming a small college like campus. I will not attempt to repeat that opposing evidence or arguments. I do wish to stress however that my client does not agree with the original Rehm report, or the new evidence from Mr. Grenz or the report from Maul Foster & Alongi, Inc.

The applicant has failed to demonstrate the feasibility of the subject property to provide sufficient domestic water for its expanded uses without adversely impacting the water usage of neighboring properties. The evidence in the Record from Mr. Grenz deals only with water conservation measures[3] that might be taken, but does not rise to the level of proving feasiblity. Similarly, as is pointed out by Caroline Childers and others, the flaws in the water budget calculations and the formation of the hydrogeology study, discredit that evidence from a credible showing of feasibility for compliance.

The applicant apparently understands that current information in this Record is not sufficient to prove it has sufficient water, so it is now proposing imposition of conditions in order to satisfy the approval criteria.

To begin with, Marion County is under no obligation whatsoever to utilize conditions as a method of complying with the approval criteria. *Corporation Presiding Bishop v. City of West Linn*, 45 Or LUBA 77 (2003). It is well within the power of the Hearings Officer to find that the requirement for an adequate supply of water is not met, and to not consider conditions of approval that might satisfy the criteria.

The use of conditions to satisfy an approval standard is fraught with trouble for the local government that chooses to use conditions, and for the applicant who tries to comply with the conditions, as well as the surrounding neighbors who have to monitor compliance. First, conditions must be found to be feasible to carry out the purpose and intent of the condition, as well as the end

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[3] If water conservation measures such as new faucets and toilets and showers are to be so effective, why have they not already been installed in the existing facilities?

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result actually satisfying the approval criteria. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006). Specific findings of feasibility in addition to findings of criteria compliance are required. *Gould v. Deschutes County*, 227 Or App 601, 612, 206 P3d 1106 (2009) and *Northgreen Property LLC v. City of Eugene*, 65 Or LUBA 83 (2012). The conditions must be clear and objective and specifically directed to compliance with the approval criteria. Conditions that are vaguely worded are not acceptable. Conditions must include sufficient language to be enforceable, which means establishment of definable metrics that Marion County can use to determine if the condition is being complied with, and complied with in a timely manner. None of these requirements are addressed here by the applicants.

Proposed Condition B, from the applicant's April 1, 2021 submittal proposes some sort of negotiated settlement between the applicant, Marion County and OWRD to determine all of the details for monitoring use of water.

Proposed Condition C, from the applicant's April 1, 2021 submittal proposes triggers for when the monitoring established in proposed Condition B demonstrates that applicant's use of water has exceeded the 20,000 gallon limit, or some other not yet specific amount, then the applicant has to have a water right, and if not Marion County may have the right to revoke or modify the conditional use approval.

Proposed Condition D, from the applicant's April 1, 2021 submittal proposes a hypothetical situation where obtaining a water right somehow supercedes the county's SGO regulations.

The proposed condition from Mr. Grenz and repeated by the MFA group in its open record submittal is to require implementation of water conservation measures as part of the expansion. No specific language is proposed, nor is it set forth how such a condition would work. How is Marion County going to inspect and enforce water conservation measures? Will a planner have to go to the property periodically during the year and take inventory of every faucet, shower and toilet in the place? Who pays for the training to determine if the fixtures are the appropriate kind, let alone the hours or days it would take a staff member to walk through this entire complex taking inventory.

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What measures of enforcement occur when a violation is found? When are the new facilities to be installed? Upon expansion as suggested? What then about the fixtures in the buildings that are not involved in the expansion? The questions are too numerous to make this proposal viable.

In any event it is impossible to determine from the Grenz letter if the change out in fixtures will accomplish sufficient saving in usage to accommodate the hundreds of new users proposed here. The entire process is so complex and cumbersome that any such inspection condition simply will not work and therefore is not feasible or enforceable and can not be used to find compliance with the adequate water criteria.

Proposed Condition B requiring some future resolution of the water issue outside of the public process is unlawful and unworkable. The language is vague and the rights of the various parties are not specified, and how enforcement would be done is not firmly established. Applicant proposes "monitoring" instead of "metering" as a method of determining the amount of water being used. Why does the applicant want "monitoring" instead of "metering." Monitoring is much more subjective and open to interpretation and argument. Metering provides metrics that establish identifiable gallon usage that can be tracked specifically. Metering presents much better data that can be used to specifically identify the exact amount of water being used at the facility at any given time. Even the applicant's own expert recommended metering and not monitoring.

In addition, this proposal is unfair and unlawful as it makes determinations regarding a critical approval criteria in a later process without the participation of the public. Where a condition of approval defers compliance to a later point in time, where there is no public process to determine if compliance has been achieved, it is unlawful and subject to remand by LUBA. *Meadow Neighborhood Assoc. v. Washington County*, 55 Or LUBA 472 (2007).

The applicant indicates it will forfeit its conditional use permit if the monitoring shows they are exceeding their allowable water usage, however there is no land use process to allow for that, and the language of the proposed condition does not state this. The condition says that Marion County MAY revoke of modify the conditional use permit. This language is simply unworkable and does not

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follow the process for land use decisions in Marion County. Revocation of a permit requires following a process, one that the applicant most likely would object to given what would be at stake.

Even if the permit were to be revoked, what would be the result? In the history of Marion County planning there is only one situation where a building has been required to be torn down due to a land use violation and that was an old nearly uninhabitable single family dwelling decades ago, not a complex of buildings, some of which would be nearly new. Most likely, there would be a long term fight Marion County would be forced into, expending staff time and money that could be avoided, and ultimately the site would be considered a non-conforming use, a situation that does not solve the existing water issues and most likely would continue to exacerbate those issues.

Applicant is limited to at most 20,000 gpd of use currently. My clients assert the applicant uses nearly that amount right now, and will certainly exceed that in the future. The only way to establish the actual water usage is by metering, with meter readings done by OWRD and/or Marion County. Certainly this critical task can not be left up to the applicant to voluntarily report. The applicant's response to the lack of water for this expansion is to obtain an additional water right. However, there is no evidence in this Record that it is feasible for the applicant to obtain a new water right. It is clear and undisputed in this Record that water rights in Oregon are precious and are not often granted. In areas that are already considered to be groundwater limited by the State of Oregon, a new water right can not be considered possible, likely or reasonably certain to succeed, which is the standard by which feasibility is judged. *Gould v. Deschutes County*, 216 Or App 150, 161, 171 P3d 1017 (2007) (citing *Meyer v. City of Portland*, 67 Or App 274, 281-82, 678 P2d 741, rev den, 297 Or 82, 679 P2d 1367 (1984)) and *Johnson v. City of Gladstone*, 65 Or LUBA 225 (2012).

Proposed Condition D where the applicant asks that obtaining a water right supercedes the county's Sensitive Groundwater Ordinance is not lawful. Whether a property has a water right or not is not a situation that pre-empts application of the county land use regulations generally, or the SGO specifically. Changing the application provisions of the SGO takes an ordinance amendment, and can not be done by a condition of approval in a single land use case.

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Finding compliance with the critical water criteria in this case simply can not and should not be achieved through conditions of approval, no matter who it is that is proposing the condition. Certainly the conditions proposed by the applicant are self serving and drafted in such a manner that it will never be possible to know for certain how much water is being used. In this situation, the applicant has not met its burden of proof that there is adequate water for this proposal, that will not adversely impact the neighborhood, and no measure of conditions can overcome this.

5. Deficiencies in the Application

There are so many deficiencies in this application that even if the Hearings Officer had jurisdiction over the application, it could not be approved even with the revised site plan submitted during the open record period.

The Site Plan has proposed new buildings that are simply boxes on the map with no detail whatsoever except we now know that all the new residential structures are proposed to be two story. There still is no elevation provided for what the new buildings look like, and no information on how many persons would occupy each building.

We now know that the building on Tax Lot 800 is another residence, but we don't know if that is student or staff housing, or how many people will live there.

According to MCZO 17.128.050 there is a required 100' setback from any residential uses in the AR zone where it is adjacent to an SA zone. The entire northern and western boundary of the subject property is contiguous to the SA zone, and therefore the 100' setback is applicable along that entire boundary. While it is impossible to scale the small Site Plan available to the public here, it is clear that there remain several structures within the 100' setback. How the county is to determine if those uses are now or will be in the future residential in nature is not explained.

While it is possible for Marion County to consider an adjustment or variance to the required 100' setback requirement, such has not been sought in this case, and therefore the Hearings Officer has no jurisdiction to consider it now. MCZO 17.128.050.

The subject property is in a Limited Groundwater Area, and is subject to the Sensitive

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Groundwater Overlay (SGO) provisions of Chapter 17.181. The adequacy of water to serve the massive expansion sought here, and its significant adverse impact on neighboring wells, is a critical issue in this case. As to the critical issues of water, for the purpose of demonstrating the deficiencies in the Site Plan, it is important to note that there are three wells shown on this revised Site Plan. The documents submitted with the application indicate there are at least two wells on the property, but their locations were not previously disclosed on the original site plan. On the revised site plan one of the three wells depicted is identified as the abandoned well referred to in the written submittals by the applicant and their representatives. The second well, identified as the "lower well" lies in the middle of the property, and appears to be closer to the proposed new drain field than is allowed by rule. The third well, identified as the "upper well" is shown to be off the property on the adjoining property to the south. There is no evidence in this Record to confirm or verify that the applicant has any right to the water from this well, nor is there an easement proffered here to demonstrate that the applicant has the right to access the well for service or to run piping from that well to the applicant's property.

Failure to put forth evidence of the legal right to get water from the "upper well" is fatal to this application, as under any opinion offered in this case, the use of only one well can not serve the existing population, let alone the projected growth proposed here.

Continuing with the issue of water, the water study and other preliminary water information in the Record indicated that the applicant supplies water off-site to four neighboring properties from its on-site water system. During this hearing process, the applicant now admits that there are at least seven properties off-site that are actually served by the on-site water system. The validity and credibility of the Rehm study relied on by the application is questionable since Mr. Rehm again did not have sufficient or accurate data upon which to base his conclusions. Nowhere in the application materials is this off-site distribution of water reconciled, either in the number of users of the system, or in the amount of water used by these off-site users. Given that water is such a critical issue in this case, the credibility of their water study and the applicant's delivery of the precious limited quantity

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of water off-site must be considered here. Without all the information on this additional use of water, it is impossible to make a reasonable finding of compliance with the adequate water criteria.

The application materials state they obtained a "master plan" approval in Case CU 80-35 as early as 1980, however that statement is blatantly false. CU 80-35 had nothing to do with consideration or approval of any master plan for this property. Action Item #5 in the CU 80-35 decision specifically limits the decision as follows:

> *This conditional use permit is limited to authorizing the three dwellings and the existing use of the property as a church related educational and training facility. Change in the use of any existing building, construction of new structures or related facilities shall require approval of a separate conditional use permit.*

The application is unclear as to the user population that is expected to use the expanded facilities. The narrative indicates they currently have 95 staff and 120 students living on the property. However, this figure does not include the day users that are on the site from 8-12 hours at least 5 or 6 days a week. At another spot in the narrative, it is disclosed that there will be 90 day users, in addition to the live-ins. The narrative is unclear if that number is what is existing, or what is expected upon build out of the expansion. In the recent submissions the numbers are stated to be 406 residents and 60 day users with 30 using the ropes course.[4] The differing numbers of users of the site provided by the applicant is disturbing where the actual number of people on the property at any given time using the classrooms, the dining rooms and the restrooms is a critical factor for consideration. CU 90-114 specifically limited residential occupancy to 200 persons on the property, yet it is impossible to tell from the testimony of the applicant just exactly how many people are there.

The applicant asserts in its original materials that it has 215 residential occupants on the property at this time. By virtue of this admission, the applicant is in current violation of CU 90-114.

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[4] The site plan shows 12 RV spaces, but none of the occupants of those RV spaces appear to be included in any of the applicant's population projections. There could be from 12 to 24 more people on-site 24/7 living in these RV's, the water consumption and septic usage of which are not ever considered in the application materials.

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This admission kicks in MCZO 17.110.680 quoted above and should be considered by the Hearings Officer as reason to dismiss this case, or at a minimum to consider the violation of previous conditions of approval in determining if the applicant is willing or even capable of compliance with any future conditions of approval.

Now in the open record when the violation is brought to light by the applicant's own testimony, applicant's attorney argues that it is the number of beds available for use that controls the total population allowance imposed by CU 90-114. This is a creative use of the word "residential" that does not work in the text and context of that decision. The population limitation was intended to apply to the number of persons on-site, using the facility at any one point in time during the 24 hour day cycle. If the intent was to limit the number of users to the number of beds, the decision would have said so. The purpose of the limitation is to ensure usage of water, sewer and transportation met the physical abilities of the site. If one only looks at those who sleep there, all the water and septic and transportation issues from the day users would be ignored. According to the applicant there are upwards of 90 day users at the site, none of which would be considered under the use limitation. Applicant presumes that none of those 90 folks will wash their hands, or go to the bathroom, or drive or ride to the site, or to eat on dishes that need to be washed, or drink any of the water on offer. The imposed condition does not apply only to the sleepers, it applies to the entirety of the population using the facility at any one time.

Given the applicant's own admission that they have 215 people on site at any one time, it is a clear violation of the 200 person capacity established in CU 90-114, adding to the violations for which the Hearings Officer must deny this application under MCZO 17.110.680. In addition, the applicant's strained interpretation of the population limitation is a classic example of why conditions of approval are not effective ways to address real problems.

The confusion generated by the applicant continues as to its statements regarding the total future population that will be using this property. It is stated in one portion of the narrative that the total number is 165 staff and 300 students, for a total of 465 users. Later in the narrative and in the

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supporting reports, the total number of users is only 461, then in another place the number is only 406. In applicant's most recent submittal, Exhibit 117 states there will be 406 residents, plus 60 commuting staff and 30 visitors to the ropes course, for a total daily user amount of 496. Exhibit 118 states there will be 406 residents, plus 50 commuting staff and 30 visitors to the ropes course, for a total user amount of 486. In Exhibit 119 it is only the 406 residents, plus the 60 commuting staff, plus 50 visitors for a user total of 516, not counting any users of the ropes course or occupants of the RV Park. Obviously, the applicant has no clue how many users there will be, nor does it appear do its experts. None of these proposed population numbers are in agreement, and the differences are never explained, yet having an accurate water user number is critical in determining if there is an adequate supply of water available without impacting the surrounding neighborhood.

When expert reports, such as for water and septic and traffic, rely on admittedly understated and indeterminate population figures, serious doubt has to be cast on the credibility and accuracy of those reports.

Finally, with regard to the noise generated by all these folks using the subject property, the narrative relies on the "handbook" to prove the applicant strictly enforces the noise restrictions. However, the handbook is just a statement of policy, but which does not address enforcement any of the rules contained therein. At no place does the narrative explain how noise is regulated, identified or who enforces the regulations set forth in the handbook. The narrative is deficient in addressing the noise generated on-site, which is a very serious matter as consideration of noise is an approval criteria.

Applicant's Exhibit 117 states "The closest neighbor is approximately 400 feet from the nearest campus building, and is approximately 900 feet from the nearest parking area. As my client's submittal during this previous Open Record period attests, these figures are overstated by as much as 600%, casting serious doubt about any conclusions offered by the applicant as to noise mitigation.

Based on all of these identified deficiencies in the application, there simply is not enough information to go on for review, or in making findings and conclusions that can lead to a reasonable

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land use decision. The application should be dismissed for lack of necessary information, or in the alternative, this proceeding should be continued until such time as the missing information is provided and the confusing information cleared up.

6. Application Does Not Satisfy the Approval Criteria

In the event consideration of this application reaches the review and consideration of the substantive approval criteria, it is asserted that this application does not and can not comply, and therefore must be denied.

The first and foremost criteria for consideration of this application is that the proposed expansion must be in harmony with the purpose and intent of the AR zone. This criteria is so important to the consideration that it is stated both in the conditional use criteria at MCZO 17.119.070(B), as well as in the AR zone conditional use criteria at MCZO 17.128.040(A).

In order to determine if harmony can exist, it is critical to review the purpose and intent of the AR zone, which is stated at MCZO 17.128.010 and quoted as follows:

> *The purpose and intent of the acreage residential zone is to provide appropriate regulations governing the division and development of lands designated rural residential in the Marion County Comprehensive Plan. Acreage residential zones are areas that are suitable for development of acreage homesites. Such areas are necessary to meet the housing needs of a segment of the population desiring the advantages of a rural homesite. It is the intent that residential sites be provided with adequate water supply and wastewater disposal without exceeding the environmental and public service capability of the area or compromising the rural character of the area.*

Key elements of this passage are the intent for provision of acreage residential homesites that can provide adequate water and septic without exceeding the environmental capability of the site, and most importantly that any development will not compromise the rural character of the area.

While some limited non-residential uses are allowed in the AR zone, all uses have to comply with the mandates expressed in MCZO 17.128.010. The proposed expansion of Youth With a Mission goes well beyond what can be considered to be a rural use, and in so doing it will compromise the rural character of this area. The purpose and intent of the conditional use that allows religious organizations with related conference and residence facilities in the AR zone envisioned a

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rural neighborhood church with a parsonage residence and related building often associated with churches such as a gym that could be used for larger gatherings of the congregation in a conference or group setting. Such a church was intended to be placed in the AR zone in order to serve the surrounding AR population, and certainly it was never thought that a vast complex of buildings such as proposed here could ever be allowed in the AR zone, especially where the facility has no relationship to service to its local surroundings.

The site is currently at the maximum that should ever be allowed in the rural area, and to allow even further expansion sets an extremely dangerous precedent. If this expansion is approved, there is nothing to stop the applicant from coming back in a couple of years with another 300 population addition and 5 more buildings, and then a couple of years after that another 300 people and more dorms and dining rooms and restrooms. It must be remembered that this applicant has a history of repeated expansion. This expansion has to stop now, or it never will until there is no water or rural services left for anyone else.

The subject property is already way beyond what anyone could imagine as a rural residential use. Given the water system, septic systems, the dormitories, the offices, the several places of worship, the site is already very urban in character. To expand beyond what is there now, the applicant should be required to change the plan and zone designation to an urban level of allowed uses. Land use planning must be realistic, and this plan in the current zone is simply not reasonable or realistic. The use should be in a more appropriate urban zone, and good planning requires this application be denied and the applicant told that if it wants to expand beyond what is there now, they need to apply for urban zoning.

It is understood that this land has been the home of non-residential uses for a long time, but heretofore, those uses have been limited and controlled by a series of land use decisions that kept the property within reasonable growth in a mostly rural state.

In the beginning, CU 80-35 recognized that the applicant's intent was to establish intensive farming practices on much of the property with suitable soils as part of the educational program. In

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CU 81-15 an expansion of the project was allowed based on the proposed use of the site for training of students in agricultural practices. The theory was that the employment of the land in agriculture would maintain the rural character of the land. In CU 90-114 occupancy at the site was set at 200 persons in order to keep the population at a reasonable level so as not to compromise the rural character of the neighborhood.

It does not appear that any of the proposed "intensive" farming practices used to gain prior approvals were ever put in place on the property, and as previously noted, the occupancy level at the property now exceeds the 200 person limit imposed in 1990. The concept of training missionaries in agricultural practices to gain skills to pass along to other peoples of the world seems no longer to be the focus of Youth With a Mission at this location. The site is essentially devoid of any agricultural connection, and thus no longer has any connection to the rural character of the area.

The Site Plan submitted in this case shows a nearly fully developed property, all for non-rural residential uses. Aside from the treed area in the southern portion of the property where the climbing tower and ropes course is located, and large areas set aside as "drain fields."[5] The remainder of the 31 acre tract will become fully developed with impervious surfaces, huge parking lots that are totally out of character with the rural nature of the area, one giant assembly hall in full view of Battle Creek Road, 22 buildings all much larger than a single family dwelling would be, and a 12 space RV park. This proposed expansion is simply too much development for this area, and it certainly compromises the rural character of the Battle Creek neighborhood that is predominated by small rural residential parcels and few larger resource parcels. Allowing this expansion would be like placing Chemeketa Community College on this property. It simply will be too intrusive to be compatible with the surroundings.

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[5] In the site plan dated 11/18/2020, these areas were identified as "drain fields", in the next site plan dated 1/27/2021 they are identified as "drip fields." In the current version of the site plan, the areas are again referred to as "drain fields." There is no adequate explanation put forward for this flip flop in designations.

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Strictly from a density point of view, this project allows too many people to maintain the rural character of the area. The county has previously determined that the maximum occupancy should be limited to 200 persons, and that level of occupancy should remain in place, and be better defined and any expansion over that number should be denied as compromising the rural character of the area.

Density is a key element of determining how an area is allowed to develop. The purpose and intent of the AR zone is for a density of one single family dwelling per two acres of land. Breaking this down further, it is assumed for population purposes that each single family dwelling has an average of just under 3 persons per household. That means the AR zone density is set at 1.5 person per acre given 3 persons per house and 2 acres per house. The subject property is just over 31 acres in size, so its expected density in the AR zone is only 47 people. This figure decreases dramatically for properties in the SGO zone, where the requirement for hydrogeology studies on properties under 5 acres result in fewer properties being allowed to develop due to groundwater limitations.

The current allowable population on the property is 200, or 6.5 persons per acre, already over 4 times the projected rural residential density in the AR zone, and much more than that given the SGO density restrictions. This proposal is for either 406, 461 or 465 residents, which is a density of 14-15 persons per acre, 10 times the allowable density. These figures may or may not include the day users and members of the public that come to the site to rent the ropes course, and for density purposes should be considered no different from a 24/7 resident. Using the total population of users of the expanded facility at near or over 500, the actual real time density is up to 18 persons per acre, a dramatic increase over what the zone code and comprehensive plan anticipated for this property when the AR zoning was first applied. Applicant also advises that periodically it will conduct special events that will attract several hundred additional members of the public to the site, and nowhere are these users ever accounted for in traffic generation or water consumption or septic usage.

The applicant fails in its burden of proof to show that this expansion will not compromise the rural character of this area. The applicant simply relies on past history. They postulate that since they have had no problems in the past (an assertion many in the area dispute, as do the facts set forth in

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the historical record of land use actions and applications on this property which are included in this Record) there will be no problems in the future. The logic of this is absurd, since the property will look much different, be much more intensive in its uses and have over twice the population as they had before. This higher level of development will generate many more problems and exacerbate the existing problems than the current site, yet the narrative fails to address this and as such fails in its burden of proof as to this criteria.

The proposed expansion of this property is simply too much. The expanded number of persons using the site and the increased number of buildings and parking, compromises the rural character of the area. There is no way this expansion can be allowed, as it fails to satisfy compliance with this first approval criteria.

The second approval criteria for this conditional use is that the proposed expansion will not increase traffic beyond the capacity of existing roads. MCZO 17.128.040(B). The traffic report submitted by the applicant reveals that the average daily trips (ADT) to the site will double with this expansion. My client believes even this is an understatement, but certainly agrees that traffic will be much heavier on Battle Creek Road, to the extent that it will become unsafe for area residents. This is especially so on days when the applicant puts on events that appear to generate in the neighborhood of 500 additional persons being on-site, all of which presumably would arrive by automobile. Given that there is only one entrance to the site, the potential for a huge back up on Battle Creek Road as cars enter the site and try to find parking, is very high clogging the street and making it difficult for area residents to travel.

It is admitted that Battle Creek Road has no pedestrian paths or bicycle lanes, only travel lanes for cars. There is quite a lot of bicycle use of Battle Creek Road currently, and some pedestrian use. Adding so many students, who often are on the property without a car, has the potential to add many more bikes and walkers to the road as those would be their only mode of transportation. The conflict between the increase in normal traffic, as well as the dramatic increase in traffic during events, is great and safety risk very high. None of these conflicts is adequately addressed by the applicant.

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It should be noted that the applicant's traffic report fails to take into consideration or evaluate the additional traffic that will be generated by their special events that will take place in the new Assembly Hall and throughout the facility grounds. It is highly likely that special events will have short term arrival and departure turnarounds, and given that upwards of 500 people might be involved in a special event, the number of car trips on Battle Creek Road most likely would overwhelm the road and nearby intersections. Failure to take the special events into account renders the traffic study less than adequate for criteria compliance.

In fact, all the applicant really has to say about the increase in traffic is that they will pay their proportionate share of traffic improvements. This is a hollow statement given that no traffic improvements are recognized as being necessary by the applicant. Further, it is unknown what paying their proportionate share even means. If there are to be improvements, what are they, when will they get constructed, and who pays the rest of the cost not covered by the applicant.

During the original proceedings in this matter, Public Works had been insistent on contribution by the applicant towards improvements to be made at Delaney and Parrish Gap roads. Mysteriously, and without any explanation or evidentiary showing, this contribution requirement has been deleted by Public Works. The requirement for contribution to the improvements at Delaney and Parrish Gap must remain in this case until such time as a full accounting by Public Works is made for the elimination of that contribution. At the very minimum, Public Works owes an explanation to this Record for why contribution to area traffic improvements was deleted. This is supposed to be a transparent public process, and when such a significant condition is eliminated, an explanation for why must be presented and justified.

There remain too many unanswered questions about traffic to consider that the applicant has met its burden of proof that the doubling of traffic to the site will not exceed the capacity of Battle Creek Road. As such, the applicant has not shown compliance with MCZO 17.128.040(B).

The third approval criteria for this conditional use is that there must be shown to be adequate fire protection and the availability of other rural services for the proposed use. MCZO 17.128.040(C).

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The applicant has not produced any evidence to satisfy this criteria. In its narrative compliance with this criteria is alleged because they have "reached out to the Turner Fire District." The addition of all the new proposed buildings, together with the huge increase in population, including a recognized 342% increase in water usage, has to put significant pressure on the ability of the system to provide an adequate provision for fire protection. Will there be enough water that is legally available to fight a fire? Is another hydrant needed? Can fire and emergency vehicles reach all of the structures? Since there is only one entrance to the site, what happens if that entrance is blocked by a car accident, trees down, natural hazards like earthquake or flood? Is the emergency access now proposed sufficient?

There simply are too many questions that are as yet unanswered for compliance to be found to this criteria. The concept that an inquiry to the local fire district is sufficient to satisfy this criteria is ludicrous, as such a statement does not even rise to the level of demonstrating feasibility that fire protection to the expanded campus would be adequate. Without a showing of feasibility, this criteria can not even be complied with by imposing a condition of approval.

Similarly, the application is silent on the provision of "other rural services" which is an integral part of this criteria. Only passing mention is made of the adequacy of police or ambulance coverage, provision for electricity, education or cable television, and then only in the open record period when the missing information was pointed out. Failure of the applicant to address any of these other rural services in a meaningful manner equates to a failure to comply with this approval criteria which must lead to a denial of this application.

The fourth approval criteria requires the applicant to show this expansion will not have a significant adverse impact on groundwater or water quality or on soil and slope stability. MCZO 17.128.040(D). The availability of water for the proposed use is also controlled by the mandates of the SGO.

An extremely critical issue for my client is the impact of such a huge expansion on the groundwater and the domestic wells that serve all of the Battle Creek neighborhood. There is no community water system that serves the area, so all properties are dependent upon groundwater for

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their drinking water. Since this area has been identified as a Limited Groundwater Area by the state, and the county has applied its Sensitive Groundwater Overlay zone on the neighborhood, the impact of this expansion on surrounding wells is a critical analysis. My client's position is that this expansion will present significant adverse impacts on groundwater in the area long into the future, and the material submitted here does not satisfy the applicant's burden of proof on this approval criteria.

The applicant relies entirely on the Rehm Hydrogeology report, and its limited peer review, as well as notes on the report from its latest geologist water company. The Rehm report does not comply with the requirement for locating wells that serve the property on a site plan map, and does not deal with all of the connections to the water system. According to GPS data used by Oregon Water Resources Department (OWRD), and the admission on the current site plan (upper well), one well used in the Rehm report is not even located on the subject property, and there is no evidence of a legal right to use or even to get to this off-site well. As pointed out by my clients in their direct submittals to this Record, the Rehm prepared Water Budget inaccurately portrayed the impacted area resulting in a faulty analysis and recharge rate.

It must also be noted that the applicant is operating on OWRD exemptions since it does not have a water right to obtain water. Given the AR zoning, the density of the development, the location in the Limited Groundwater Area and imposition of the SGO, it will be nearly impossible for the applicant to ever obtain a water right to serve this property. It is therefore critical in this analysis to understand that the applicant has the right to only take 15,000 gallons per day (gpd) from the groundwater, and may not pump and store water in excess of its exempt allocation on any given day. Assuming the applicant may also be entitled to an additional 5,000 gpd for a commercial allocation, the maximum usage of water allowed to this development will be 20,000 gpd.[6] From calculations of

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[6] While the applicant argues it is entitled to the additional 5,000 gpd exemption for commercial users, there is no evidence of such entitlement in this Record. Making the assumption of this

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the information now in this Record, it appears the applicant uses nearly all or more than its exempt domestic allocation presently. Given the proposed estimated water consumption increase at 342%, it becomes clear the applicant will far exceed its allowed water consumption with this expansion. Since they do not have a water right, and have made no showing of feasibility to obtain one, water consumption by law must be limited, and when water consumption is limited, this expansion can not lawfully be allowed.

According to the DEQ records, septic usage on the property is projected at 24,400 gpd on any normal day. It is also incorrectly stated in the application materials that the applicant supplies piped water to four homes on the east side of Battle Creek Road. As discussed herein, there are at least seven additional homes being served from the applicant's system, none of which were considered in the applicant's calculation of its water consumption. Given the daily average for single family dwellings at 525 gpd, the seven homes we now know exist as users of the water system, use an additional 3,675 gpd, bringing the daily total to 28,075 gpd. Add to that event surge in usage which is estimated to be an additional 7,500 gpd[7], and the projected usage on peak days of 35,575 gpd. There is no evidence that such a volume of usage is lawful given the OWRD rules, or if the system can produce that much water, or what the impacts on Battle Creek and the aquifers in the area would be. Without definitive answers on these questions, this criteria is not satisfied.

Mr. McCord in his OWRD comment for this Record emphasizes that the only water allowed to be used on this property has to be within exemption limits. His concern on the amount of water usage has prompted him to note that all wells serving the property would need to be metered "to ensure that the limits allowed in both volume and location of water use under the exemption are not

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additional entitlement does not rise to the level of substantial evidence upon which critical decisions can be made.

[7] Events assume an additional 500 persons on site, each using 15 gpd, for a total of 7,500 gpd.

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being exceeded." Note the need for actual metering, not monitoring (whatever that might mean).

Additional information and concerns were expressed by Travis Brown, also from OWRD, whose Email is in this Record. Mr. Brown notes the questionable and scanty information presented on the well seals for the two wells that are reported in the Rehm report[8]. He further suspects that both the referenced wells have a hydraulic connection to Battle Creek, which is troubling when reviewing the impact of the tremendous amount of water proposed to be used here might have on the creek. What is most telling in the Brown email is his findings that monitoring wells nearby each show an "overall declining trend" in the amount of water available for domestic wells. This finding closely matches the decline in water availability reported by many homes in the Battle Creek area. Even the applicant's new water expert agrees that the availability of water in the area is declining.

Included in the previously submitted Record materials is an email to my client from Ken Lite, Senior Hydrogeologist with GSI Water Solutions, who has been engaged to review the water situation proposed by this applicant. Mr. Lite reports the applicant's narrative makes several statements that are inaccurate or conflict with their own Rehm report. He points out that one of the wells was pumping at 18,000 gpd usage in 2017. Not accounting for any additional usage over the last 4 years, and just taking the fact that the applicant indicates water usage will increase by 342%, the math done in his email shows a projected water usage with this expansion becomes 61,560 gpd, over three times the legal limit.

Mr. Lite agrees with the assessment of Travis Brown from OWRD that the applicant's wells likely are hydraulically connected to Battle Creek. He goes on to state that the source of water for the applicant's wells is the same groundwater flow system as that which serves the surrounding

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[8] The information provided by OWRD indicate there are missing or inconsistent well logs. The Peer review of the Rehm report says the well log records should be reconciled. However, there is no evidence in this Record that the missing well logs have been found and included here, or that the well logs have been reconciled. Lack of such information reveals a failure in the applicant's burden of proof.

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neighborhood, and not from a separate source. This would no doubt account for his conclusion that this groundwater system "is already in some distress." This conclusion is evidenced by the monitoring wells referred to by OWRD personnel and referenced above. His opinion of the proposal is best stated in his own words:

> *The data in the Hydrogeology Review indicates **anticipated water usage will be beyond exempt use limitations**, YWAM wells are constructed across multiple aquifers and therefore **have the potential to impact neighboring wells**, and MARI 12553 is likely in hydraulic connection to Battle Creek. OWRD water-level monitoring **data shows declining groundwater levels in the area and suggests unsustainable groundwater usage**.* Emphasis supplied.

Where water usage is projected to be 342% of existing, resulting in the daily use of 61,560 gallons of water total, an estimated 40,000+ gpd more than the current usage; without a water right for that much water; on property located within a Groundwater Limited Area; and a demonstrated declining trend in the availability of groundwater for neighboring domestic wells; it is clear that this proposal will have a significant adverse impact on the area groundwater.

According to the latest Oregon Health Drinking Water Data, a copy of which is in this Record, the two wells that serve the applicant are subject to high aquifer sensitivity, and are subject to E-Coli sources within 2-year-time-of-travel. Further, neither well is considered to be adequately constructed with seals missing or unknown. This report was updated on December 11, 2019, so it provides the most recent water information available.

What is also important to note in this report is that the number of connections to the applicant's water system is listed as 13. The applicant's Water Study disclosed only that it served 4 off-site homes, which figure has now been admitted by the applicant to be 7. A Marion County Environmental Health staffer, Greg DeBlase, confirmed that records of the survey indicate that 7 of the 13 listed connections are to homes not located on the applicant's property. In addition, the report lists the served population from the applicant's water system as only 100, while the applicant here states that the current people using the subject property is 240 (90 staff and 150 students). This inconsistency in what is reported here and what is reported to the OHA in the evaluation of the water

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system has to be troubling, and raises questions about the information that is being put in this Record on behalf of the applicant.

Because, according to OWRD and the Senior Hydrogeologist at GSI Water Solutions, the applicant's wells are constructed across multiple aquifers and are likely hydraulically connected to Battle Creek, there is high risk of contamination of the off-site connections, the aquifers which support other water-users and the waterway itself. It is important to note these aquifers are listed as high in sensitivity.

The OHA report information also has to be considered in the evaluation of the Rehm report, where Mr. Rehm must not have been provided with complete and accurate information as to the number of connections served by this system. Since he did not have all the facts, the results of his report must be brought into question, as there are users of the system whose water use is not accounted for. Most critical is of course the fact that the applicant has no water rights and its water use must fall below the exemption limits, making an accurate calculation of water use from this system important in order to comply with the legal limits of water use.

This verified expert information, together with the facts discussed above about the lack of rights to the "upper well"; that the applicant failed to reveal or discuss the implications of it providing water from its system to off-site properties, and it clear that the applicant has not met its burden of proof as to groundwater. The lack of water right that would be necessary in order to legalize the projected volume of water to be used with this expansion should by itself prohibit approval of this application. There is no evidence even of the feasibility of the site to lawfully draw the huge additional volume of water that would be necessary to accommodate this proposal, making even conditional approval unavailable.

My client previously submitted to this Record an analysis detailing errors and omissions in the applicant's Hydrogeology Review. Their corrected Water Budget, based on all of the evidence now revealed about water usage, shows that groundwater is over-allocated in the Study Area.

The last relevant approval criteria is that the applicant must demonstrate that its expansion will

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not produce noise to the extent that it will significantly adversely impact nearby land uses. MCZO 17.128.040(E).

As with the other issues, this application is devoid of any meaningful evidence that the large expansion of the structures and persons on campus will not produce noise at a time and level that will have significant adverse impacts on nearby homes. All the applicant says is that its "handbook" will control the noise, and that there is little regulation or governmental enforcement of noise regulations. Imposition of "quiet time" as now being suggested is ridiculous for young adults and on-site staff members. Will cookies, warm milk and blankets also be provided? The applicant's ideas are not sufficient to satisfy this approval criteria. There is no hard evidence of the decibel level of church services, outdoor activities, vehicle use, or how any of that noise would match up against the ambient level of noise in the area.

In its most recent submittal, the applicant asserts that neighboring houses are 400 ft away from applicant's buildings and 900 ft away from parking lots, which is alleged to be adequate space for the noise to dissipate. This assertion fails when realizing the distance figures are overstated by multiples as discussed above.

Without a noise study, none of this critically needed information is present, and the applicant has failed to meet its burden of proof on the issue of noise impacts. The excuse that ambient noise can not be measured during this pandemic, only speaks to the fact that the applicant has not met its burden of proof, and if it is the pandemic that is stopping them, they should be denied now and instructed to come back when the pandemic is over and re-apply.

The applicant has failed to demonstrate compliance with MCZO 17.128.040(E), which must result in a denial of this application.

7. Conclusion

This application fails on many different levels, from jurisdiction, to deficiencies in the application to failure to meet the burden of proof on all relevant approval criteria.

What is clear in this application is an over-reaching applicant that has flaunted local

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regulations and violated conditions previously imposed on it. Over reaching in that this proposal dramatically increases the uses on the land and the number of people living and working and studying there. They have obtained approval for a climbing tower on the basis that it would be used only as part of the educational program, then use that tower to create a ropes course to sell to the public in a commercial enterprise that is clearly not allowed in the AR zone. Flaunting further, the applicant ignored the 200 person capacity limit, by admitting here that they have 240 persons in residence (staff plus students), and perhaps another 90 day users. This application which is not complete or understandable as to many critical features, and must be denied.

The combination of these violations, together with the proposal to include an RV park at the property, when an RV park is prohibited in the AR zone, have stripped the Hearings Officer of jurisdiction over this case which must then result in a dismissal of this application in total.

Regardless of these blatant violations, this expansion does not and can not satisfy the approval criteria and must therefore be denied on its merits.

This expansion will significantly alter the land use character of rural lands of the Battle Creek neighborhood. The project in its current state has multiple issues with the neighbors, with the huge increase in the number and size of buildings, the large parking areas visible from Battle Creek Road, and the more than doubling the user population, the rural character of the area is materially compromised. A quiet pastoral area dominated by small acreage homesites will be disrupted by the proposed increase in density of this project, so much so that it can not be considered to be in harmony with the purposes and intent of the AR zone. The most important element of that harmony is not compromising the rural character of the area.

Other specific problems exist with traffic, water and septic, for which the applicant has not met its burden of proof. The applicant asserts that it's handbook takes care of the problem with generation of noise. However without enforcement of the rule by their administration (or the government) the mere statement of a rule does not assure compliance with either the rule nor with the decisional criteria. The applicant asks for conditions be used to satisfy approval criteria, but the

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conditions proposed are fraught with problems, most likely are unenforceable, and do not assure the promised end result in any event.

This application simply asks for too much. The site is already over-developed for the rural character of the area, and any expansion will simply tip the scales and turn this site into something that can not be considered rural in any sense of that word, and which will destroy the pastoral rural character of this area.

This application should be dismissed in its entirety. The applicant has failed to meet its burden of proof as to the approval criteria applied to this expansion. This is a bad plan that must be rejected.

DATED this 11th day of May, 2021, at Salem, Marion County, Oregon.

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RECEIVED
MAY 13 2021
Marion County
Planning

TO: Marion County Hearings Officer
FROM: Caroline Childers
Rural Battle Creek Road Association, Inc.

DATE: May 13, 2021
RE: Rebuttal to Applicant's Post-Hearing Submittal, CASE 21-004

Please consider the following corrections, clarifications, and comments in response to Applicant's post-hearing submittal dated 04/29/2021. We will reference the PDF Page numbers of the electronic file(s) posted by the Planning Division (not the actual report page).

Exhibit 117, PDF Page 4: "The Current Uses on the Property are Authorized ..."
"The opposition alleges that there are enforcement violations on the property. The Applicant rejects these assertions."
"The current uses on the property are authorized under the existing conditional use permit."
Our comments: The Planning Division's "Supplemental Response to Conditional Use 21-004" dated 4/26/2021 concludes: *"Planning believes the current ropes course to be an unapproved use of the property."* It is unquestionably an unauthorized commercial activity selling services to the public and it is not allowed in the AR Zone. We do not even find formal approval for the ropes course in the historical file, only a "climbing tower" which is a distinctly different type of structure.

- Per MCZO 17.110.680, *"All land uses shall be conducted in full compliance with any other county ordinance, code and requirement of state and federal law. Failure to conform to other applicable laws may be grounds for revocation of any permits and enforcement action, including, but not limited to, a citation in accordance with Chapter 1.25 MCC."*
- Per MCZO 17.110.760, *"It shall be the duty of said official to investigate any such complaint and any violation regardless of whether or not a complaint has been made thereof and to take such action as may be necessary."* The opposition has brought this to the attention of Marion County. It is not our obligation to file a written complaint and initiate enforcement action. The Applicant may not credibly assert they are not in violation of the county code when it is obvious that they are.

Exhibit 117, PDF Page 6, "Large Events": *"Applicant has historically has not hosted large events on the property and does not intend to do so in the future." (sic)*
Our comments:

- Many times in this process, and in the CU 17-023 process, we have highlighted the fact that the Applicant holds "special events" on the property hosting many extra visitors. It is imperative that the Hearings Officer know how many people attend these (historically and planned in the future). The traffic analysis, the DEQ site evaluation, the OWRD exempt-water limitations and proper evaluation of noise impacts all require facts that the Applicant has avoided providing.
- At least as far back as the YWAM 1992 case, this has been an issue. Written testimony by then-neighbor John Hook, which we have previously submitted, stated the following regarding the 200-person capacity limitation: "From the number of cars and busses that I frequently see there, it appears that this limit was waived. If this is so, why?"
- This question about attendee totals at special events is in the record in Case 17-023 but was never answered by the Applicant.
- Neighbor Sproul, speaking in support of YWAM at the Public Hearing for CU 17-023 on August 30, 2017 at approximately 7:53 p.m. (according to my written notes), explained in a complimentary fashion that he was very appreciative that YWAM alerted him in advance of **"big events"**. According to Merriam-Webster Dictionary, the first entry under the definition for "big" is 1(a) "large". So, the Applicant's witness informed the Hearings Officer under oath in CU 17-023 that large events are held at the site.

- We have asked this question multiple times in the current case, including at the 4/1/2021 Public Hearing (CCTV, Marion County YouTube Channel video time stamp starting @ approximately 1 hour 47 minutes) when the Applicant's Director was available under oath, but it has not yet been answered by anyone testifying to facts on behalf of the Applicant in CU 21-004, so the attorney's assertions on this matter should be dismissed as irrelevant. The Notice of Public Hearing for CU 21-004 stated: *"Licensed Oregon attorneys may make legal argument without being sworn, as long as facts on which the argument is based are supported by sworn oral testimony or written affidavit."* Although we specifically asked that this disclosure be presented under oath by the Applicant during the Public Hearing, it was not.
- To reduce the likelihood that we and the county would again be missing such important data in the current case, Rural Battle Creek Road Association submitted a letter to Marion County Planning Division on January 11, 2021 and asked that the county require ALL pertinent headcount data if/when YWAM submitted a new Conditional Use Application. All the headcount data we requested is relevant and should have been submitted by the Applicant, but it was not.
[ATTACHMENT R-1a, R-1b]
- If the Applicant chooses to insist that special events have not been held on the site and will not be in the future, contrary to testimony we have provided and as stated by their own witness, then the signer of the application should submit a statement under oath to the record saying they have had no events which hosted extra visitors and will not in the future. Otherwise, the Hearings Officer should consider this lack of responsiveness to be an intentional attempt to skirt proper evaluation of vehicle-turning metrics, water usage, septic capacity, and noise.
- The Applicant's attorney argues circular logic in the "Large Events" comments on PDF Page 6: *"However, provided the Property was able to support a large event based on the capacity of water and septic systems, large events will be permitted by virtue of the use of the Property."* This roundabout effort to get approval without fully disclosing headcount numbers then, once approval is obtained, using the approval decision to leapfrog the requirement for any professional evaluation of the adequacy of water, septic, and safe road access is mind-numbing in its audaciousness.
- It is our judgment that the Applicant is dismissive of the requirement for a complete, accurate application. Per MCZO 17.110.680, "The director or the hearings officer may deny any land use application if it is determined that the application includes any false or misleading information."
- Certainly, if CU approval is granted for ANY expansion, it should include a prohibition against hosting any visitors in excess of what they request (which, at this time, seems to be zero other than for the "ropes course"). If these special events with extra visitors are not planned, as Applicant's attorney asserts, then this prohibition should be unobjectionable to the Applicant.

Exhibit 117, PDF Page 8, "Detail on Site Plan": *"The opposition alleges that there is not a sufficient level of detail on Applicant's proposed site plan. Applicant's site plan is a concept plan designed to obtain land use approval through the conditional use process. Applicant's site plan shows sufficient detail for the conditional use permit process and development on the Property will be reviewed for additional detail through Marion County's building permit process."*

Our comments:

- This statement is revealing, but disappointing. If true that such a Site Plan is "sufficient", the Applicant may draw the footprint of a new building on the site, not mention the occupancy (which they still have not done), not mention the number of stories (which they finally did three months late) and not mention any details about the structure except the footprint. By their logic, they may request approval with such a "concept plan", get approval, then express surprise when someone (a neighbor or the Building Department) takes exception to a proposed new building that is, for

instance, 5 times taller than what is allowed in the AR Zone. What would happen then? Would it get approved after the fact without the public's input? Would the Site Plan be redrawn with five buildings to replace the one? With insufficient detail, how do neighbors and the county pass judgment on whether the proposal is compatible with the rural nature of the zone? Since we still do not know the proposed heights of buildings, if any approval is given to this CU, it should make clear that no authorization is granted to exceed the maximum height of a structure allowed in the AR Zone.

- MCZO 17.119.010 states: *"Review of the proposed conditional use by the director, planning commission or hearings officer will ensure that the use will be in consonance with the purpose and intent of the zone."*
- MCZO 17.119.070 states *"Before granting a conditional use, the director, planning commission or hearings officer shall determine:*
  (B) That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone." *[Emphasis added]*
  Consonance and harmony with the zone are emphasized for a reason! Adequate information must be provided by the Applicant so the decision-maker(s) can do their job and so the citizens can judge the proposal for themselves.
- We discovered an unfortunate situation upon receipt of the 04-29-2021 Site Plan which, for the first time in this CU process, shows 2-story dorm buildings next to the closest neighbors on the south side of YWAM. They have endured the noise and hubbub of activity around 1-story buildings near their house for decades. The planting hedge which was ordered in Case 81-15 to screen the house and yard from noise and visual activity died because an inappropriate shrub species was planted (or not maintained properly) by the Applicants at the same time they were (supposedly) training missionaries in agricultural methods. There are multiple communications in the county file about this situation. Now, on a 32-acre site, the Applicant's most recent Site Plan reveals they plan to build 2-story dorm buildings approximately 50 feet from the neighbors' property line, approximately 130 feet from their house. In so many ways, this plan is a travesty and deserves rebuke.

Exhibit 117, PDF Page 9, "Detail on Site Plan", Item (d): *"Provided the location of the two wells that serve the Property as well as the location of the abandoned well."*
Our comments:

- We could not find evidence on the OWRD website that any wells on YWAM parcels have been formally abandoned per OWRD regulations. There are specific state requirements for how this is properly done, and it is important to the safety of the aquifers and to the public that it be done correctly and reported to OWRD.
- On the most recent Site Plan dated 04-29-2021, the first time in this process that a Site Plan has shown any well locations, the "Abandoned Well" is located on the north side of the main roadway, near the "Boardwalk Offices". In CU 17-023, the only well on their Site Plan was located on the south side of the main roadway, near the dining/kitchen building, but no well shows at that location on the most recent Site Plan. Are these two conflicting Site Plans inconsistently depicting the location of one abandoned well or is there a fourth well not currently shown on the Site Plan?
- Notably, on the 04-29-2021 Site Plan, the "Lower Well" (which is elsewhere identified as the "Main Well") clearly shows as being much closer to an Existing Drain Field than the 100 ft setback required by OAR 690-210-0030.

Exhibit 117, PDF Page 10, "Availability of Rural Services": *"Applicant has been in discussions with the Turner Fire District, the provider of emergency fire services to the Property and has revised the site plan*

to allow for wider access roads and an additional emergency access road at the north end of the campus."

Our comments:

- As we mentioned in a previous submittal in the case record, Public Works requested decades ago that the access at the north location be closed for safety reasons. Has Public Works evaluated and approved this latest change to the Site Plan? If approved by Public Works and the Hearings Officer for emergency use, any approval order should preclude use for any purpose other than emergencies.
- It is unclear to us if the proposed emergency access is fully on the Applicant's property. If not, do they have a legal right to use this driveway? If they do not, how can it be considered as a legitimate plan?
- We find no information in the record to date that discloses the size of a new water-storage tank that would be required for firefighting and from what legal water source the tank will be filled. Due to constraints on exempt water sources and uses, this evidence must be provided in order to comply with MCZO 128.040(C). If a new water right will be sought for this purpose, then that should have been disclosed so the feasibility of satisfying this criterion could be analyzed.

Exhibit 117, PDF Page 12, "Adequacy of Water": *"This hydrological review was performed in conformance with accepted hydrogeological methodology ...".*

Our comments: It is interesting that the Applicant's attorney does not claim here that the review was completed in accordance with Marion County's requirements. As we noted in our 04/28/2021 submittal during the Open Record Period, the Hydrogeology Review was NOT performed in accordance with the requirements of the SGO Ordinance Chapter 17.181 and the SGO Manual. In some regards, the deficiencies were major, not minor. The "Corrected Water Budget" we submitted indicates that groundwater is overallocated, so the CU should not be approved. At a minimum, it should trigger the requirement for a complete Hydrogeology Study per Chapters 17.181.100(C) and 17.181.110 before any consideration of CU approval. To comply with MCZO 17.128.010 and 17.119.070(B), evidence of legal access to the water necessary for the proposed expansion is required.

Exhibit 117, PDF Page 13, "Feasibility of Applicant's Water Budget": *"Applicant has established that at full buildout there will be capacity.... "and "it plans to incorporate conservation technology".*

Our comments:

- Applicant has NOT provided credible evidence that they can operate their expanded facility with legally obtained water. We believe their Water Budget is incorrect (as detailed in our previous submittal) and they have not followed any reasonable, professional protocol for assessing possible water-use reductions. With all due respect to their engineer, who did not present expert credentials on this specific subject matter, the Applicant has not fulfilled the most rudimentary requirements of a water-use conservation plan.
- Before one can determine "water savings" projections, it is imperative that a "Water Audit" first be performed. Many sources provide guidance on this task, so we will quote one:

  "It is important that facility executives develop an understanding of exactly how and where their facility uses water. To do this, an inventory of all water use points in the facility with flow rates must be developed.

  Start with a walk through of the facility, identifying every point in which water is used. For items such as toilets and faucets, the inventory should include the item, its location and its ***flow rate****. If the facility has low-flow fixtures or if flow restrictors have been installed, identify them on the inventory." (Source: facilitiesnet.com)* [Emphasis added]

- The alleged potential water-use reductions (i.e., 55% reductions for some uses according to the Applicant's engineer) are completely baseless if no credible inventory of <u>current</u> fixtures, uses and flow rates has been taken. Since the manufacture of low-flow showerheads, faucets and toilets has been federally mandated since the early 1990's and many programs have been sponsored by various levels of government to help retrofit buildings since then, it is hard to fathom the possibility that any reasonably responsible enterprise with a couple hundred people on-site would not already have adopted many of these conservation measures. To be frank, it is not a plausible possibility unless you presume that the Applicant is flagrantly reckless in its facility management - - - especially when they know they are located in a Groundwater Limited Area. Any posited claims of potential water reductions must be dismissed as without any credible foundation since the Applicant has not provided any current audited plumbing/water-use inventory <u>and</u> the process was not undertaken as part of the Hydrogeology Review and the Peer Review as would be required by the Marion County SGO Manual.
- It should also be noted that DEQ already presumes in its calculations that low-flow plumbing fixtures will be installed in the facility, so their numbers already reflect that presumption. We believe DEQ's numbers are skewed low, however, because they do not consider that an unusual number of occupants are permanent residents (some with families who reportedly do not go off-site for jobs or school) that spend most of a 24-hour day on-site.

Exhibit 117, PDF Page 14, "Feasibility of Septic System": *The opposition suggests that Applicant has not adequately addressed the floodplains" . . . "the only proposed development in the flood plains is the stormwater detention facilities."*

<u>Our comments</u>:

- According to Marion County Planning Division in their Staff Report in a previous 1981 YWAM case (as quoted in our email submittal dated 04/29/2021), *"The area east of Battle Creek is flat and subject to flooding."*
  Testimony by opponents in this case corroborated the county's statement. Now, in Supplemental Staff Comments dated 04/26/2021, the Planning Division elaborates:
  > *"It appears that the mapped boundaries of the floodplain conflict with actual field conditions. The applicant should provide a map that enables Planning to determine adequate setback and development standards. The applicant should provide base flood elevation data for the property, and will potentially need to meet the other requirements found in* ***MCC 17.178.060 (G)*** *for developments generally as well as other applicable standards in the floodplain code depending on the type of development proposed."*
- The Applicant must heed the advice of opponents and Marion County by providing base flood elevation data for the entire property and, as suggested, meet the other requirements found in MCZO 17.178.060(G). Otherwise, the county and the applicant will be in jeopardy if the development exacerbates flooding downstream. The Applicant has not attempted to demonstrate that CU criterion 17.128.040(D) has been satisfied in this regard; the county has an even greater obligation to examine and ensure this requirement is fully met for the protection of the watershed and the downstream residents.
- The CU21-004 Staff Report dated 03/22/2021, "Comments" section states: *"Marion County Septic commented that the customer will be replacing damaged septic tanks under a county onsite permit, and that any additional work to the septic system will need to be done under a State of Oregon DEQ WPCF Permit."* Now, the "Applicant's Response to Comments and Opposition Testimony – Post Hearing Memo" states on PDF Page 9 (Report Page 7): *"<u>The property is developed with an existing septic system that will be decommissioned as part of the proposed development</u>."* These two

statements are diametrically opposed to each other. Which is true? Are damaged tanks going to be replaced or is the existing septic system going to be decommissioned? Which "plan" and information were provided to DEQ when they evaluated the site and proposal in 2020 and established their guidelines? What, specifically, is the plan for the existing drain field which appears to be much too close to the Applicant's main well? These open questions lead to the conclusion that CU Criteria MCZO 17.128.040(A), (C) and (D) have not been satisfied.

Exhibit 117, PDF Page 17, "Estimated Noise Generation": *"The closest neighbor is approximately **400 feet** from the nearest campus building and is approximately **900 feet** from the nearest parking area. This is a significant amount of space to allow noise to dissipate ...". [Emphasis added]*
Our comment: We confess that several of us independently did some head-scratching when reading this assertion, knowing that these quoted distances were vastly overstated. An engineer in our neighborhood then used the Applicant's proposed Site Plan and Google Maps to determine approximate distances:

- Neighbors' houses are as close as 130 feet from Applicant's buildings (versus the claimed 400 feet).
- Neighbors' houses are as close as 140 feet from parking areas (versus the claimed 900 feet).
- Neighbors' houses are as close as 490 feet from the proposed "covered sports court" which, presumably, would be a big noise-generator, especially when compared to normal types and levels of noise in a rural-residential setting.

In nearly all cases, outdoor living spaces (yards, patios, decks, and gardens), all of which are cherished areas in our rural neighborhood, are even closer to the Applicant's "nearest campus building" and "nearest parking area" than the figures mentioned above. We value spending our time in these areas of our properties and discordant sounds interfere with the use of our land.

Doing our best to reconcile the faint outlines of homes on Google Maps with satellite imagery on the Marion County Assessor's website and compare to the most recent Site Plan:

- Two homes would be less than 400 feet from buildings (1 from the new Assembly Hall, 1 from dorms).
- Nineteen homes would be less than 900 feet from parking areas (16 from the Assembly Hall parking area and 3 from the parking area near dorm buildings on the southwest side of the site).

We visually present the distances on the attached drawing/map.
[ATTACHMENT R-2]

- Although the assertion by the Applicant's attorney in Exhibit 117, PDF Page 17 is grossly inaccurate, it at least implicitly acknowledges that greater distances than planned would be necessary to "allow noise to dissipate" and bring noise levels "into conformance with the noise level anticipated in the rural residential zone". As such, the approval criterion MCZO 17.128.040(E) regarding "noise" is hardly satisfied, especially when no noise studies have been performed for routine activities, the ropes course or proposed new activities (such as the covered sports court) and no special event data has been provided regarding attendee numbers and noise levels.
- As one neighbor (Mack) explained in a 03/25/2021 letter submitted to the record, "As weather warms (May through September) and YWAM starts holding outdoor events, it is a problem, the noise level is that of a sporting event with hundreds in attendance. We can hear the revelers from inside our home. One of the hoped for benefits of living in a country setting is the expected peace and quiet, on event days there is no peace and quiet."
- The Applicant may not simply wish away the testimony, misstate the proximity of neighbors' homes, and blame a pandemic for their non-responsiveness to this CU approval criterion.

Exhibit 118, PDF Page 20-22, Multi/Tech Engineering Services synopsis:

- The Applicant's engineer claims the current plan is for 406 residents, 50 commuting staff, 30 ropes-course users. This conflicts with Exhibit **117**, PDF Page 8 which provides figures of 406, 60 and 30. This also conflicts with Exhibit **119** which presents different totals. In all cases it is unclear if these figures include RV occupants. Certainly, the Applicant does not acknowledge that other visitors are known or planned to be on-site for special events or events of any kind, straining credulity.
- It continues, *"The water system operated by YWAM also supplies water to seven (7) homes not part of their facility. Those homes would represent a water consumption of around 2,200 to 2,400 gallons per day."*
  Marion County SGO Ordinance presumes water use of 525 gpd per household, so that total would be 3,675 gallons per day of presumed use, leaving less exempt gallonage available for use by the facility.
- On Multi/Tech PDF Page 21: *"In 2016, the metered water production from the system was only 8.67 acre-feet." "The Hydrogeology Report specifies a median consumption of 14.01 acre-feet of water. We believe that is skewed by the leaks and should be more like 10.0 acre-feet to 11.0 acre-feet of water."*
  The engineer's letter fails to mention that the Hydrogeology Review reported that the main well was pumping 18,000 gallons per day in 2018 when the Review was published, years after "leaks" were supposedly fixed. It is not only the average per day over the span of a year that is important, especially when the Applicant acknowledges that the on-site population varies throughout the year. Per OWRD rules, it is the MAXIMUM usage on any day of the year which is critical. The maximum sizing of the enterprise population (residents, commuting staff, routine visitors, and special-event visitors) is limited by its maximum use on the peak day of the year - - - when peak populations are on-site. Also, for septic-system sizing, the peak population (including visitors) must be considered. As we mentioned in a prior submittal, a neighbor testified in one or more YWAM cases that he has seen soap suds floating down Battle Creek immediately south of YWAM after their special-event days. Throughout this process, the Applicant has failed to address these facts.
- On Multi/Tech PDF Page 21, *"The goal would be to get the per capita water consumption down to 38-40 gallons per day for the residing group and less than 3 gallons per day for the off-site staff and visiting students."*
  This means that commuting staff could flush a low-flow toilet once in an entire workday, wash their hands once or twice and, perhaps, allow their lunch utensils to be washed in the community dishwasher. If they need to use the restroom again, perhaps portable toilets would be strategically placed around the 32-acre site for convenience. On a long-term basis, the placement of many porta-potties would certainly not be compatible with the rural residential setting of our neighborhood. As described in the Marion County Comprehensive Plan, Rural Development, Rural Residential Development section: "*A rural homesite can provide unique **scenic** and open space benefits and an alternative housing type and lifestyle that has important social and personal benefits." [Emphasis added.]*
  Permanent stationing of portable toilets to achieve water-savings goals would not be considered "scenic" by most residents of our neighborhood, but the Applicant has not provided convincing evidence of a viable alternative.
- DEQ stated in their letter to the Applicant dated 12/7/2020 (copy submitted with the application) that residents were presumed to use 50 gpd and day-users were presumed to use 15 gpd. The nature of the population (mostly non-permanent, so "training" of conservation practices would be a constant struggle with every new group) would lead no reasonable person to conclude that the figures targeted by the Applicant's engineer are feasible. They have not been generated in any

formal, serious manner as prescribed by the SGO Manual, so they must be dismissed as sheer conjecture and wishful thinking.

- On PDF Page 22, the engineer offers "examples of common facility fixtures flow reduction amounts". As previously explained, without a Water-Use Audit and Inventory, it is impossible to know whether or not they have already installed some low-flow devices. It would be jaw-dropping if they acknowledge on the record that they were so irresponsible that they had not already done so. The presumed "reduction" figures are entirely speculative and unusable.
- As we have previously mentioned, according to the Applicant's descriptions, the vast majority of the residents spend most of a 24-hour day on the premises, not even leaving for off-site schooling, so water-use is concentrated at this site in a different manner than most households.

Exhibit 119, DKS Associates, PDF Page 33: *"The current planned capacity for the YWAM campus after the proposed expansion is 406 people which includes on-site students, on-site staff, **and off-site staff**."*
[Emphases added]
Our comment: This seems to conflict with the YWAM attorney's statement on PDF Page 8 that *"406 residential users, which includes both students and staff residing on the Property and a maximum of 60 staff members who reside off-site but may be on-site for up to eight (8) hours a day. There will also be capacity for an additional 30 off-site users..."*

Honestly, we are not sure if a comma is missing between the word "Property" and "and" above, so we do not know if this should be counted as 406 plus 60 plus 30, or 406 (including 60) plus 30. The ever-changing and inconsistent numbers are, at best, befuddling and hardly inspire confidence in whatever plan there may be. In any case, we reiterate, the Applicant does not acknowledge any plan to host special events with ANY extra visitors, so they should not be allowed to have them if ANY expansion of the facility is approved, since the professional analyses did not consider impacts of these events.

Exhibit 119, DKS Associates, PDF Page 34: *"Even if large events were hosted on-site, they would likely occur on weekends and would not coincide with peak hours of the roadway system."*
Our comment:

- As a neighbor who testified on behalf of YWAM at the CU 17-023 Public Hearing in 2017 said, YWAM hosts "big events" as we noted earlier in this submittal. Yet, the traffic professionals, the DEQ, the interested Marion County citizens and the Hearings Officer have apparently not been informed how many extra people are on-site during any special events. This is a major failing of this application.
- What arrival and departure days and times, what numbers of cars and buses and people have attended or will attend special events - - - these are all relevant questions that have not been answered. How can one judge traffic impacts, particularly turning-activity and the possible need for a turn-lane to be constructed, without this data?
- The county has received complaints and testimony, both within this CU process and otherwise, about the speed of traffic on Battle Creek Road, the many wildlife crossings (and we know that reports of many dead deer on the roadway have been called in to Public Works Road Dispatch each year), and the demonstrably unsafe condition of the sub-standard road shoulders for pedestrians. To put into some perspective, when a neighbor suggested in 2019 that Rural Battle Creek Road Association publish information to the neighborhood about the new state laws which allow harvesting of roadkill, we reluctantly chose NOT to do so for fear that we would inadvertently encourage citizens to try to park a vehicle along Battle Creek Road and maneuver a dead carcass off of the road surface or shoulder when it is likely unsafe to do so without emergency cones and lights to protect people's safety. We frequently publish the Marion County Roads Department Dispatch

phone number so people in the neighborhood know who to call to remove dead deer from the roadway.

- If the new Assembly Hall is built, there is no reason to assume that it will only host visitors on weekends, as suggested by the traffic consultant. What is the basis for that assertion? The Applicant did not offer such testimony under oath and, to our knowledge, has still not disclosed the occupancy capacities for the Assembly Hall and the large dining facilities. It is more reasonable to believe that some evening events (such as recitals or other gatherings) would be hosted with short-duration arrival and departure times to visit these venues. Anyone who has attended events or services at religious institutions and schools knows that many of these activities happen on weeknights. There is a parking lot planned next to Battle Creek Road, surrounding the Assembly Hall. For what purposes will this be utilized? The TIA even mentions that the Applicant is considering renting out the facility in the future. Where is the Traffic Analysis of the possible or likely occurrence of any and all of these types of events, whether in the Assembly Hall or elsewhere on the site? What is the impact from this increased turning activity, which could occur in evening hours when ambient light conditions are poor and wildlife (such as deer) are active? This is yet another major failing of this application.
- Assessment of compliance with MCZO 17.128.040(B) is not simply about the flow or volume of vehicles, but it is about a complete evaluation of the ingress/egress activity so that the safety of ALL people on the roadway is considered.

Exhibit 120, MFA, PDF Page 37, "Wells Screened in Multiple Aquifers and Questions of Well Seal Competency":

Our comments:

- Comments by our geologist and the OWRD geologist admittedly conflict with the Applicant's past and recent submittals. Our "Corrected Water Budget" also significantly disagrees with the one submitted by the Applicant. We believe that the Applicant has not demonstrated compliance with the MCZO 17.128 and the SGO Chapter 17.181 and, therefore, the CU should be denied. If the Hearings Officer does not agree that this should result in outright denial of the Application, then MCZO 17.181.100(C) provides the mechanism to sort out the conflicting professional evaluations: "A hydrogeology study pursuant to MCC 17.181.110 shall be required if the hydrogeology review establishes that any of the following circumstances exist." We believe that some or all of the four listed circumstances exist in this case, so a Hydrogeology Study would be warranted. However, since we believe the Application should be rejected for many reasons other than this, we are not advocating for this option.
- We will also pass along comments made by the NW Region Manager, Mike McCord, in a phone conversation I had with him on 5/5/2021. He told me that the YWAM wells "do not meet current well-construction standards and they likely didn't meet well-construction standards at the time they were drilled". (He said he would confirm the latter, but I have not heard more from him as of this writing.) In any case, he told me that if the Applicant obtains a new groundwater right, they would be required to drill new well(s) since the existing wells do not meet current construction standards and reconstruction is too problematic with very old wells.
- Per Page 16 of the "Water Well Owner's Handbook" published jointly by Oregon Water Resources Department and Oregon Health Authority and mentioned in our prior submittal:

  "If the well will be used to provide water to the public for consumption (four or more connections, or serving 10 or more people per day for at least 60 days per year), ***additional construction standards*** *and requirements apply."* *(Emphasis added)*

- What production would they achieve with a new well? No one knows, but one thing is certain. The feasibility of providing lawfully obtained, adequate groundwater for the proposed expansion is unquestionably NOT proven in this case, so MCZO 17.119.070(B), 17.128.010 and 17.128.040 (A),(C) and (D) are not satisfied.

Exhibit 120, MFA, PDF Page 40, "Hydraulic Connection to Battle Creek": *"The GSI and OWRD comments are speculative..."*
Our comments:

- In the two paragraphs following this statement, the MFA submittal offers their own speculative comments, as follows: they use the term "likely" at least four times and the term "whether" at least four times.
- As we stated in our 4/28/2021 submittal, we believe we have presented solid reasons to have no confidence in the work product exemplified in the Hydrogeology Review, so any conclusions drawn from Applicant's submittals on these subjects are suspect or ambiguous at best.

Exhibit, MFA, PDF Page 42, "Response to comments on declining regional water levels": *"Exhibit 104 includes water budget calculations . . . using the methods described in the Marion County Manual for Completion of Hydrogeology Reviews and Studies, in Compliance with the Marion County Sensitive Groundwater Overlay."* *[Emphasis added]*
Our comment:

- We provided a detailed analysis dated 04/28/2021 of the Applicant's Hydrogeology Review and provided many examples which demonstrate LACK of compliance with the SGO Manual referenced above and MCZO 17.181.
- Continuing on PDF Page 42: *"YWAM has plans for significant water conservation programs (See Exhibit 118)."*
  As noted in our 4/28/2021 submittal, the SGO Manual requires presentation of conservation plans in the review if they are to be considered and states "The peer reviewer shall document" this information. If performed properly, first with a complete audit and inventory, then with DETAILED plans, the county decision-makers would have some basis for judging "reasonable expectations" according to the SGO Study Manual, PDF Page 10. No such work has been performed for this application and any claims of water-use reductions cannot be considered credible or consistent with the SGO Manual. Therefore, all these assertions should be ignored.

Exhibit 120, MFA, PDF Page 43, "Response to OWRD Comments Regarding Lack of Accurate Identification of Wells": *"This appears to be an error in DWS records."*
Our comments:

- Nearly four years ago, we provided information in Case CU 17-023 about the obvious errors in the OHA/DWS records regarding what MARI well-log numbers match YWAM wells. Although the Applicant claims in their Hydrogeology Review that they now know what well-logs match their physical wells, they apparently did not provide this information to Marion County Environmental Health Department nor to DWS, at least not until recently if at all. If they had done it in a timely manner, then routine follow-up by the Water System Manager or Owner would ensure that the public database was accurate. Their attorney claimed at the Public Hearing that the problem was a clerical error by OHA/DWS, but well-log numbers are provided by the water-system owner or manager, not by a State of Oregon employee. At a minimum, the lack of compliance with the most basic reporting requirements raises questions about the competence to manage an expanded facility with hundreds more people on-site.

- For the Public Hearing in CU 17-023, I submitted written testimony which went into detail about issues related to non-disclosure of well locations and incorrect well-logs identified with the water system. So, all of this begs the question: Was there a reason these were not provided in 2017 and again in 2021? We are not experts, but with modest effort in 2017, we found the logs which we believed were a match to the Applicant's site. These agree with the two they presented in their CU 21-004 Hydrogeology Review. We also found MARI 12552 which we believe is likely the well they now call "abandoned". Two of these well-log numbers (not the third) are now publicly acknowledged by the Applicant and three wells are finally shown on a Site Plan, but none of the wells meet current well-construction standards, according to OWRD.

Exhibit 120, PDF Page 43, "Response to claims of potential for aquifer contamination":
"...our opinion that the aquifers are not connected" and "the lack of hydraulic connection precludes the potential for contamination of off-site connections and Battle Creek".
"No evidence was presented indicating that contaminants are present which could be conveyed to off-site users or other aquifers."
Our comments:

- The Site Plan submitted by the Applicant with their application did not disclose well locations as is explicitly required by MCZO 17.181.040. In the current case we detailed this failing in our testimony orally and in writing as far back as March 2021, but more troubling is that we complained about this in August 2017, as noted above, so there is no excuse for the lack of correct, required information with the Application submitted in 2021. The Applicant then submitted a modified Site Plan days ago, dated 4/29/2021 (three months after submitting their application), and it shows the "Lower Well" adjacent to an existing drain field. The well appears to be much closer to the drain field than the 100-foot setback required by OAR 690-210-0030.
- So, yes, contaminants are probably present and, yes, if the septic system drain field is too close to the well and the well does not have a proper seal (as noted in OHA/DWS records), then there is the "potential for contamination". Is the suggestion being made that opponents should trespass to take samples so that this concern can be examined more closely? One thing is manifestly clear. If the required information is hidden or not properly disclosed in this public process, then the process will not function properly.
- MCZO 17.181.040 "Required review and application", states: *"The applicant for such a development permit shall submit the request on a form approved by the director along with a site plan of the subject property showing existing and proposed property boundaries; existing, abandoned, and proposed wells on the subject tract ...". [Emphasis added]*
  This chapter requires a proper Site Plan with the application, not three months later. This lack of respect for the process should be considered an affront to the county administration and the neighbors. The Applicant had nearly four years to "find" the information that we pointed out in 2017 was lacking in their CU 17-023 application, so why did they not provide it until the last minute?
- The Applicant's Hydrogeology Review states (H.R. PDF Page10, Report Page 8): "A new water supply well is being considered to contribute to the campus water supply." Where is the location on the Site Plan of this water-well which, not only is being considered, but would be required (according to OWRD) if a new water right were somehow obtained?
- Lack of proper disclosure is potential grounds for dismissal per MCZO 17.110.680: *"The director or the hearings officer may deny any land use application if it is determined that the application includes any false or misleading information."* It is undoubtedly misleading to provide a Site Plan with the Application which does not provide mandatory details which would reveal that an existing well is too close to an existing septic field to meet the health and safety provisions of Oregon law.

Exhibit 120, PDF Page 44, "Conclusion and recommended conditions for approval": *"The issues and concerns raised in the record . . . do not provide the County a basis for not relying on the Peer Reviewer's Decision."*

Our comments: The Peer Review letter dated 03/26/2019 (Applicant's Exhibit 105 in the record) states: *"If, however, additional information not available at the time this peer review was completed should become available later, the findings of this peer review may need to be updated."*

- We have submitted much "additional information" to the Planning Division which was not provided to the Peer Reviewer in the Applicant's Hydrogeology Review including, but not limited to, the following:
  Improper exclusion of dozens of sub-division lots from the Water Budget, an incorrect/misleading allegation (false, in our opinion, as we present in Attachment 5.2-5.5 of our 04/28/2021 written testimony) of "the lack of a well-developed drainage pattern" in the neighborhood (which was used to justify a very high recharge rate in the Water Budget), improperly excluding required compilation of Static Water Level data for the area which was in the possession of the geologist, and a lack of complete disclosure of all of the irrigation groundwater permits in the Study Area.
- If Marion County has not already provided the Peer Reviewer with our complete 04/28/2021 submittal regarding errors and omissions in the Hydrogeology Review, then it should do so.
- On PDF Page 42, MFA states: *"The water budget also assumes that all other users, including the nearby permitted vineyard, use the full allotment of water allowed by their permit, although actual use is well below the permitted amounts."*
  It must be noted that this CU Application requires an increase in the use of groundwater in the future. Irrigation use might very well also increase due to changes in precipitation and/or temperatures. Also, since groundwater rights may sometimes be transferred, as the Applicant's attorney has noted, that possibility must be covered with an accurate reporting of all groundwater rights in the Study Area. To suggest haphazardly ignoring the legal allocations of permitted water use would irresponsibly lead to overallocation of groundwater.
- The evidence presented by opponents of this Conditional Use Application demonstrates that the Applicant has not met its burden of proof that they have legal access to the amount of groundwater which would be required to supply their proposed expansion. Therefore, the CU should be denied.
  MCZO Chapter 17.119.060 "Conditions" states: *"The director, planning commission, or hearings officer may prescribe restrictions or limitations for the proposed conditional use but may not reduce any requirement or standard specified by this title as a condition to the use."*
  The requirement is that the Applicant must prove they will have adequate rural services and groundwater available, not that they hope they will. A potential patchwork of revocable water rights and a non-serious "plan" for water conservation outcomes are hardly adequate by any stretch of the imagination.
- The Applicant has not even addressed how large a new water tank will be required for firefighting and how they will fill the tank within the exempt water-use limitations. Therefore, "adequate fire protection" as required by MCZO 17.128.040(C) has not been demonstrated.
- The Applicant offers in its Exhibit 117, PDF Page13: *"Applicant has proposed conditions of approval that would result in Applicant forfeiting its conditional use permit in the event that Applicant's use exceeds its legal water limit."*
  This is a grossly irresponsible way to run a railroad, as the saying goes. Proof of adequacy is necessary now, not left for monthly or annual reviews by unspecified methods and unknown people in an already overburdened bureaucracy. What can the neighborhood expect if this forfeiture came to pass? Abandonment of facilities and a blight on the landscape? That would hardly be compatible

with the dictates of the Marion County Comprehensive Plan which calls for "scenic" rural-residential areas. The Applicant does not have adequate legal access to water to run their proposed expanded facility, so the CU should be denied.

- MCZO 17.181.030 demands: *"In the case of any conflict between the provisions of this chapter and any other provisions of this title, the more restrictive shall apply." [Emphasis added]*
  The Marion County ordinances are clearly intended to protect Acreage Residential zoned areas, especially those in a state-designated Groundwater Limited Area and county-designated Sensitive Groundwater Overlay zone like our Rural Battle Creek Road neighborhood, from a development which uses astronomically more water per acre than the presumed use of rural-residential homesites.

CONCLUSIONS:

- The Applicant submitted an incomplete Application.
- The Hydrogeology Review was riddled with errors and omissions and the Water Budget generated was incorrect.
- The Applicant has not submitted any credible evidence that they can operate the proposed expanded facility with legally obtained water.
- The Applicant has not satisfied the criterion that the use will not have a significant adverse impact on groundwater.
- The evaluations of traffic, septic-system, fire protection, flooding events, impacts on the watershed and noise are all inadequate to prove compliance with CU approval criteria, as we have detailed.
- The conditional use proposed will NOT be in harmony with the purpose and intent of the Acreage Residential Zone.

Conditional Use Application CU 21-004 should be denied.

Regards,

Caroline Childers, Officer
Rural Battle Creek Road Association, Inc.
PO Box 4317
Salem, OR 97302

Attached to this rebuttal:

ATTACHMENT R-1a, R-1b	Copy of RBCRA letter to Marion County Planning Division 01/11/2021
ATTACHMENT R-2	Map/drawing showing distances of Applicant's buildings and parking areas from neighbors' houses

ATTACHMENT R-1a

Rural Battle Creek Road Association, Inc.
PO Box 4317
Salem, OR 97302

Email: info@ruralbattlecreek.org

January 11, 2021

Mr. Joe Fennimore, Planning Director
Marion County Planning Division
5155 Silverton Rd NE
Salem, OR 97305

Dear Mr. Fennimore,

We have been advised that Youth With a Mission (YWAM) intends to refile a request for a Conditional Use approval to expand their campus facilities at 7085 Battlecreek Rd SE, located in our rural-residential and agricultural neighborhood south of Salem. Their prior CU application in 2017, which was withdrawn, ultimately demonstrated the complexity of this type of proposal and the difficulty planners at that time had in analyzing key aspects.

We ask that county planners study the testimony given in the appeals by neighbors in prior YWAM CU cases as part of any new request. Based on input we have already received from neighbors, we expect the same issues will be raised by many individuals and our Association.

So the appropriate county departments and state agencies have adequate information enabling them to provide relevant comments to the county about this proposal, we believe it is important that there is clarity about the potential scope of the development. At a minimum, in our opinion, this would include disclosure of the MAXIMUM potential onsite headcount resulting from every aspect of the plan upon completion of the designed build-out.

If the county is aware of any datapoint we are missing in the following tables, please add as appropriate.
We believe this headcount information should be provided to county departments, state agencies, and all other notified parties during the Request for Comments phase.

Continued on Page 2 of 2

ATTACHMENT R-1b

Residents & overnight visitors	Total # of bedrooms	Max. residents per bedroom		Maximum headcount	
Dormitory bedrooms					
Studio apartments					
Other apartment bedrooms					
Other housing bedrooms					
RV park	**Total # of Sites**	**Max. residents per site**		**Maximum headcount**	
Parking sites					
Maximum headcount residing on premises at any time ➔					

Other people on site	Maximum headcount at any time	
Commuting staff		
Commuting volunteers		
Visitors/guests for routine limited duration visits		
Extra visitors during special festivals, services or events		
Others on site (explain)		
Maximum non-resident headcount on premises at any time ➔		

Thank you for your time to consider our input. Kindly confirm that we will be included on the distribution for Request for Comments using the email address on our letterhead.

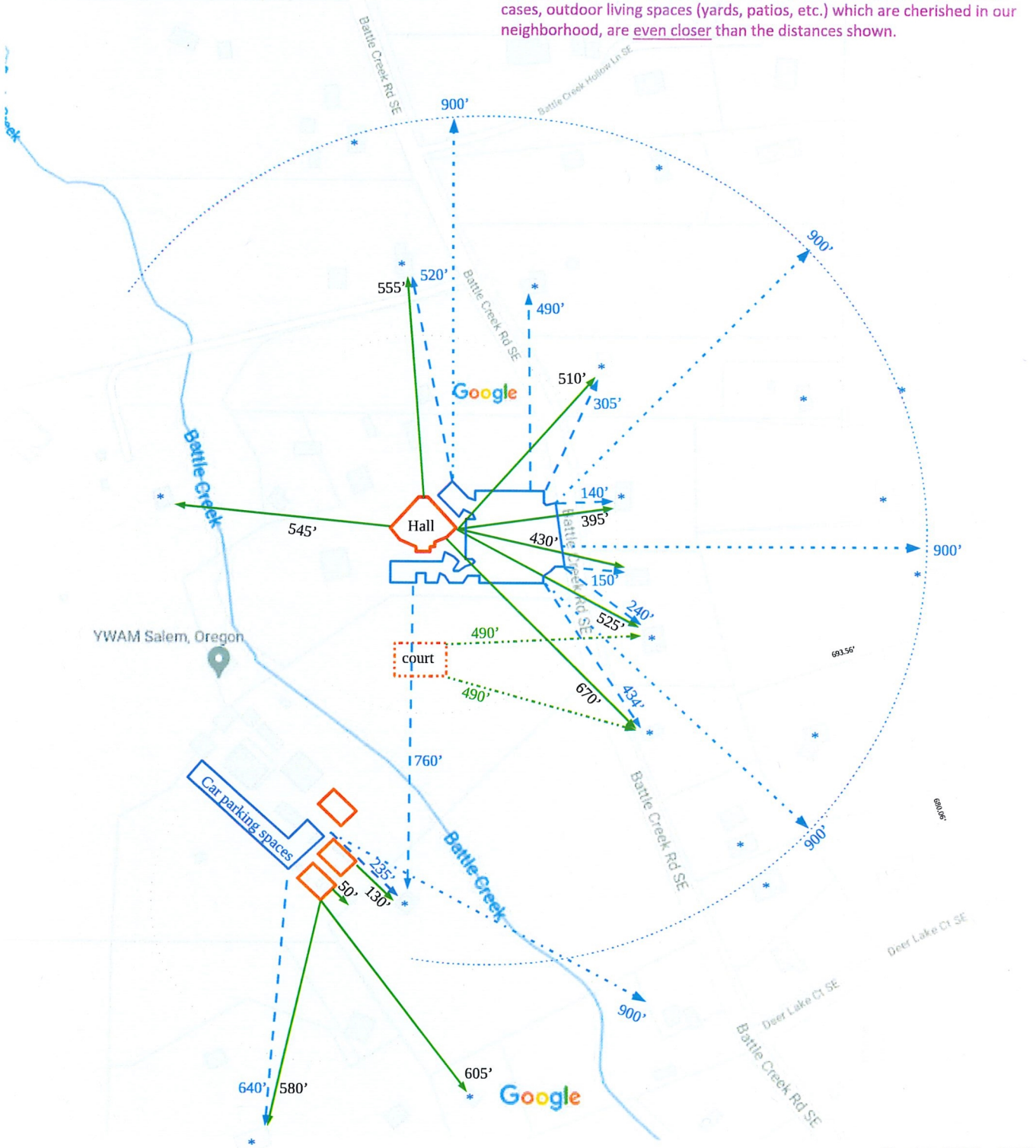
Regards,

John P. Gallagher
President
Rural Battle Creek Road Association, Inc.

ATTACHMENT R-2

RBCRA Notes:

- This graphic is a synopsis of Google Maps and Marion County mapping sites.
- See the legend at bottom left-corner of the page for explanation of "dimension lines" we have added.
- We added blue * to signify where we believe houses are located. In most cases, outdoor living spaces (yards, patios, etc.) which are cherished in our neighborhood, are even closer than the distances shown.



Dimension Line	Distance
——→	YWAM Bldg to Neighbor
- - - →	YWAM Parking to Neighbor
·····→	900 ft distance from Parking
·····→	Playground court to Neighbor

0 100 200 300 400 500 600 700 800 900'