To: Hearings Officer
From: Victor C Pagel
Re: Supplemental Comments in Opposition to Variance in PV 25-013
This Date: August 25, 2025

I. POWER TO VARY THE RULE LIMITATION OF FOUR DWELLINGS PER EASEMENT.

In MCC 17.122.010 "Power to grant variances", the matters that may varied are clearly listed as follows (numbers are mine but otherwise verbatim):

1. lot area,
2. lot width,
3. percentage of lot coverage and number of dwelling units or structures permitted on a lot,
4. height of structures,
5. location,
6. yards,
7. signs,
8. parking and loading space,
9. vision clearance and other standards when limits for an adjustment in MCC 17.116.030 are exceeded.

At the August 7, 2025, hearing, Department staff opined that the power to vary the rule limiting the number of dwellings per easement to four stems from the language "number of dwelling units" and "other standards", all contained in 17.122.010. And in his 8/12/25 Response Mr. Bickell emphasizes the words "number of dwelling units" and "limits for an" [adjustment] in attempting to justify his variance request. But 17.122.010 is silent as to the limitation of the number of dwellings per easement standard, although it is quite specific with regard to listing matters about which standards may be varied. Nonetheless, out of whole cloth it is suggested that based upon language having nothing to do with the 4 dwellings per easement rule, the power to vary the 4 dwellings per easement rule somehow exists.

In addition, the words "number of dwelling units" are combined with "percentage of lot coverage" by means of the coordinating conjunction "and" (and the absence of "or"). If the applicant believes the "number of dwelling units" is a basis for his requested variance, it seems he must also live with the "percentage of lot coverage" language - thus an even greater stretch for varying 17.110.800.

The department representative and the applicant also appear to contend that the "other standards" language (#9 above) provides the necessary variance power requested by the applicant. However, by the clear language of that rule, those standards are limited to **adjustment** of matters listed in 17.116.030, and of all the matters listed therein that are eligible for adjustments, none exist for varying the number of dwellings per easement limitation.

The same 17.122.010 the applicant cites to support his position that the power to grant the requested variance exists concludes with certain **prohibitions** as follows:

"Variances to allow uses or new uses not otherwise allowed are prohibited. Variances to criteria and definitions are also prohibited."

The **use** of these lots prohibits dwellings due to the 4 dwellings per easement rule. Allowing dwellings not only changes the use but is a new use and is prohibited under 17.122.010.

MCC 17.110.800 is clear and unambiguous that the number of dwellings that may be served by an easement is limited to no more than four. Despite apparent proposals (according to the applicant and his representative, a former planning staff member) to increase the number of dwellings allowed per easement, the rule limiting that number to four has not been changed legislatively. In addition, the rule that lists the matters that may be varied or modified (17.122.010) has not been amended in order to include the subject of limitation on the number of dwellings per easement.

According to Mr. Bickell, the interpretation and determination of the Planning Director is that the number of dwelling units that are limited off a private easement is a variable standard. As I have pointed out with the foregoing, such a "determination" or "interpretation" in this case is clearly a legislative act and is prohibited.

II. CRITERIA FOR VARIANCE IF POWER TO VARY 17.110.800 EXISTS

Mr. Barnes testified that the department is concerned with safety when considering the criteria. He also testified that the existing intersection (Burton Place easement, Imig driveway, Drzal driveway, and Happy Valley driveway) amounts to a private drive off of another private drive, which the county no longer permits. Combining this with the increased risks of damage or injury I have expressed in my August 7 written comments leads to a legitimate question about whether all of the criteria for a variance have been met.

As I have previously explained, a variance to 17.110.800 is not the **only** way to resolve the problem presented by the applicant. The property owners at the west end of Burton Place SE and the county got together, upon the application of the owners, and resolved the virtually identical problem (Notice of Decision Subdivision 01-5; and site plan submitted by the applicant). There is no evidence whatsoever that the applicant has made similar attempts to resolve his concerns.

Mr. Bickell's 8/12/25 Response includes:

> "the expense and chance of agreement of all of the property owners would be questionable. The granting of this variance to allow for additional dwellings is the best alternative for all of the individual property owners."

He thus acknowledges that his requested variance is not the only way of resolving the unusual circumstances and hardships, (circumstances and hardships which as pointed out in my August 7 written comments and testimony, are self-imposed by the applicant). Also at the hearing, the department representative stated he doesn't believe the alternative I have presented to be feasible and that it is "more feasible to bolster the easement". My point: the word "only" in the criteria means just that, whether or not more or less feasible. Moreover, feasibility has not been tested in this case, and a similar situation turned out to be feasible at the other end of Burton Place SE.

The photos submitted by the applicant are substantially accurate, including the Happy Valley easement looking south to the subject property, where it ends at the gated entrance to the applicant's dwelling and accompanying structures.

Finally, it has been suggested that I previously applied for essentially **the same** as what the applicant seeks. Not so, assuming some relevance if it were so. In my case the front 2 acres that would have been partitioned abutted the public street Burton Place SE, and my existing driveway would have become the easement to one dwelling, the same dwelling and accompanying small barn, riding arena, pond and horse shelters that remained and remains. The placement and size of the riding arena, barn, pond, dwelling, and septic system would preclude additional partitioning and dwellings. What the applicant wants are two additional dwellings off 2 different easements that include an intersection no longer allowed by the county, and no public street.