

August 24, 2011

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Dear Gentlemen:

You have asked us to review the language in Initiative 3-371 (the “Measure”) and evaluate how it might affect the implementation of urban renewal if it is approved by the voters. We believe that the Measure will:

1. Mislead voters about what they should expect if the Measure passes. This will happen for several reasons:
 - A. The measure only enacts a provision of the county code, which can freely be amended by the Board of County Commissioners. Voters are likely to assume that the Measure creates some lasting limitation on the county, even though the Measure is, fundamentally, only a political direction.
 - B. The Measure has significant ambiguities, and the Board will not be able to comply with its terms to everyone’s satisfaction, because people are likely to have different views about what the Measure means. Proponents of the Measure may argue that ambiguities should be resolved by calling another election, but that is a very expensive and slow cure for inadequate drafting.
 - C. The final sentence of Section 3.03.070 requires the county to give extensive notice before it considers limitations on the Measure. That sentence is written very broadly, so it will be difficult to understand. Moreover, that sentence is not legally enforceable, so it gives voters a false impression that extensive public notice is required when it is not.
 - D. Section 3.03.040 requires that any change a *county* makes to an urban renewal plan be made by non-emergency ordinance. This creates the impression that the Board will approve all future plan amendments by non-emergency ordinance. In fact, Oregon

law only requires and allows the Board to approve urban renewal plan amendments that increase the plan area by more than one percent or that increase maximum indebtedness. Other plan amendments are made by resolution of the urban renewal *agency*, and would not be affected by the Measure. Oregon law already requires that substantial plan amendments be approved by non-emergency ordinance.

2. Create unnecessary difficulties and costs for the citizens of Clackamas County, the Board and the Clackamas County Urban Renewal Agency, because the Measure imposes vague requirements that do not match with state law. For example:

- A. Section 3.03.030 requires that the County mail notice of an election no more than ten days before distributing ballots. For certain elections a county-wide voter's pamphlet will be prepared and mailed and the Measure states that if the notice statements are printed at the top of the explanatory statement in the voter's pamphlet, the County will not be required to mail the notice. However, in the case where a county-wide voter's pamphlet is not prepared, the County must mail the notice, and this will be an extra expenditure for the County.
- B. Section 3.03.030(B) requires an election notice to list the "maximum duration of indebtedness, listed in years and months." Urban renewal plans do not have "maximum durations" of indebtedness and can not have meaningful maximum durations of indebtedness because tax increment cash flows are inherently unpredictable and indebtedness continues until it is paid. Plans could have an "expected final payment date" for indebtedness, but they can not have a meaningful maximum duration.
- C. Section 3.03.060 has a definition of "Substantial Change" that is vague and invites misunderstanding. For example, clause (A) of that definition indicates that a substantial change occurs if an amendment changes the "duration" of a plan. Urban renewal plans do not have "durations," and the time an urban renewal plan remains in effect is subject to changes that are beyond the county's control. This means it will be possible for people to argue that many changes increase the "duration" of a plan.

Additionally, clause (A) of the definition also includes the phrase "borrowing authority." From our perspective "borrowing authority" means the fundamental authorization to borrow. However, because the phrase is broad and vague, it is possible for someone to argue that many changes expand borrowing authority. For example, a change in project scope that increases the amount that the urban renewal agency must borrow for the project might be interpreted as expanding borrowing authority.

The use of broad and vague terminology and phrases will likely generate unnecessary expense as the County and its advisors try to interpret and apply the definitions to

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various fact patterns and scenarios. It also invites litigation, and perhaps even more importantly, creates public misunderstanding and distrust.

- D. Clause (B) of the definition of “Substantial Change” is even harder to understand. It says an amendment creates a substantial change if the amendment changes the “basic purpose, engineering or financing principles” of a plan. As described above, lack of clarity about the meaning of terms like this creates unnecessary cost and delay and invites opportunities for litigation.

Very truly yours,

K&L GATES LLP

A handwritten signature in black ink, appearing to read "Harvey W. Rogers", written in a cursive style.

By

Harvey W. Rogers

HWR:acg