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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

STATE ex rel. NEW LOOK
DEVELOPMENT LLC, an Oregon limited
liability company,

Plaintiff-Relator,

v.

CITY OF LAKE OSWEGO, a municipal
corporation,

Defendant.

And

MICHAEL E. KOHLHOFF,

Intervenor.

Case No. 24CV03746

PLAINTIFF-RELATOR’S
SUPPLEMENTAL MEMORANDUM
RE: CHAPTER X AS A LAND USE
REGULATION

Intervenor seeks relief under ORS 227.197 and argues that the City of Lake Oswego violated Chapter X of its charter when approving the Plaintiff’s project. As basis for relief pursuant to ORS 227.197(5), Intervenor must show that the City of Lake Oswego violated, “a substantive provision of the local comprehensive plan or land use regulations as those terms are defined in ORS 197.015[.]” Violation of something other than the two items explicitly delineated in ORS 227.197(5) is not a legal basis for Intervenor’s desired relief. Intervenor concedes that Chapter X is not a part of the Lake Oswego Comprehensive Plan (he also fails to present any evidence as to the contrary), but rather argues that it is a land use regulation.

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1 ORS 197.015(11) defines the following four items as land use regulations,

- 2 1) any local government zoning ordinance,
- 3 2) land division ordinance adopted under ORS 92.044
4 (Adoption of standards and procedures governing approval of plats
and plans),
- 5 3) land division ordinance adopted under 92.046 (Adoption of
6 regulations governing approval of partitioning of land), or
- 7 4) similar general ordinance establishing standards for
implementing a comprehensive plan.

8 Intervenor concedes that Chapter X is not a land division ordinance (he also fails to
9 present any evidence as to the contrary). As such, Intervenor must argue that Chapter X is either
10 a “local government zoning ordinance” or a “general ordinance establishing standards for
11 implementing a comprehensive plan.” Chapter X is plainly neither.

12 Chapter X is a voter initiative that was not implemented with the formalities that are
13 required for adoption of an ordinance.

14 Pursuant to Chapter VIII of the Lake Oswego Charter, only the City Council may adopt
15 ordinances. In order to adopt an ordinance, the City must proceed as follows pursuant to Lake
16 Oswego Charter VIII, Section 33:

17 A. Filing: A proposed ordinance shall be filed with the City Recorder at least
18 one week prior to the Council meeting at which it will be considered.

19 B. Notice: Written notice of the ordinance shall be posted at City Hall and
20 two other public places and published in a newspaper of general circulation in the
21 City at least one week prior to the meeting at which the proposed ordinance will
be considered. The notice shall include the title of the proposed ordinance and the
date, time and place of the council meeting and shall state that copies of the
ordinance are available in the City Recorder’s Office.

22 C. Consideration and Enactment: Except as provided in this subsection, a
23 proposed ordinance may be considered and enacted at single meeting of the
24 Council. If the Council substantially amends the ordinance as presented,
25 enactment shall be continued to a second meeting of the Council to enable
26 preparation and presentation of an amended ordinance. For the purposes of this
section, a “substantial amendment” is an amendment that modifies the substantive
effect of the ordinance. Correction of typographical errors, procedural
modifications and wording or format changes that clarify meaning shall not be
considered substantial amendments.

1 As argued in *New Look Development, LLC’s Response to Motion to Intervene*, once an
2 ordinance is brought through this process, it is then “enacted upon approval of a question **by a**
3 **vote by the City Council.**” Lake Oswego Charter VIII, Section 35. (Emphasis added.)

4 Chapter X was not filed with the City Recorder one week prior to considering it. The
5 City Council did not provide the required written notice for Chapter X prior to considering it.
6 The City Council did not deliberate on the merits, nor did it enact Chapter X. Indeed, the City
7 did not take any of the steps necessary to adopt Chapter X as an ordinance pursuant to the Lake
8 Oswego City Charter. Therefore, Chapter X is not an ordinance, and as such, it does not provide
9 any legal grounds for granting Intervenor’s desired relief.

10 Because Chapter X is not an ordinance, Intervenor cannot demonstrate that the City of
11 Lake Oswego violated “a substantive provision of the local comprehensive plan or land use
12 regulations as those terms are defined in ORS 197.015” when approving Plaintiff’s project.
13 Accordingly, Intervenor’s challenge to mandamus relief must be denied.

14 DATED this 12th day of February, 2024.

15 JORDAN RAMIS PC
16 Attorneys for Plaintiff-Relator New Look
17 Development LLC

18 By: s/ Ezra L. Hammer

19 Ezra L Hammer, OSB #203791

20 Ezra.Hammer@jordanramis.com

21 Christopher K. Dolan, OSB #922821

chris.dolan@jordanramis.com

22 Trial Attorney: Christopher K. Dolan, OSB #922821
23
24
25
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the date shown below, I served a true and correct copy of the
3 foregoing PLAINTIFF-RELATOR’S SUPPLEMENTAL MEMORANDUM RE: CHAPTER X
4 AS A LAND USE REGULATION on:

5 Evan P. Boone, OSB #781518
6 Lake Oswego City Attorneys
7 PO Box 369
8 Lake Oswego OR 97034
9 Phone: 503 635-0225
10 Fax: 503 699-7453
11 Email: eboone@ci.oswego.or.us
12 cc: cmadruga@ci.oswego.or.us

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Phone: 808-374-5103
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Attorneys for Intervenor Michael Kohlhoff

Of Attorneys for Defendant the City of Lake Oswego

11 ***E-MAIL SERVICE AGREEMENT**

- 13 by first class mail, postage prepaid.
- 14 by overnight mail.
- 15 by hand delivery.
- 16 by facsimile transmission.
- 17 by facsimile transmission and first class mail, postage prepaid.
- 18 by electronic transmission to counsel for the City per e-mail service agreement.
- 19 by electronic transmission and first class mail, postage prepaid to counsel for Intervenor.

20 DATED: February 12, 2024.

21 *s/ Ezra L. Hammer*

22

Ezra L Hammer, OSB #203791
23 Ezra.Hammer@jordanramis.com
24 Christopher K. Dolan, OSB #922821
25 chris.dolan@jordanramis.com
26 Attorneys for Plaintiff-Relator New Look
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