

BEFORE THE BOARD OF COMMISSIONERS
FOR
POLK COUNTY, OREGON

R E C E I V E D
AUG 12 2020
POLK COUNTY
COMMUNITY DEVELOPMENT

In the Matter of the Application of:)
)
SIMMONS FAMILY PROPERTIES, LLC,)
CHRISTOPHER and KIMBERLY GRAY,)
KEVIN STONE, and JONATHAN E. and)
TAMARA E. PUGMIRE,)
)

Case No. CPA 18-01
ZC 18-02

For an amendment to the Polk County)
Comprehensive Plan Map Designation from)
Agriculture to Rural Lands, and taking an)
Exception to Goals 3 and 4, and changing)
the zone from Exclusive Farm Use (EFU))
to Agriculture and Forestry with a 10 acre)
minimum lot size (AF-10) on seven)
contiguous parcels adjacent to Best Road,)
Salem, consisting of a total of 228 acres)
comprised of Tax Lots 601, 602, 603, 604)
and 605 on Map 7.4.14, and Tax Lots 100)
and 101 on Map 7.4.23)

APPLICANT'S
FINAL REBUTTAL

COMES NOW the above named applicants, by and through Wallace W. Lien, of Wallace W. Lien, PC, and does hereby present to this Board their Final Rebuttal to information submitted during the open record period.

1. Response to Huggins Letter

Mr. Tom Huggins sent in a letter that basically repeated his testimony before this Board. He presented no new facts. His arguments will be rebutted in the Applicants' Final Argument.

2. Response to Pat Wheeler Letter

Similarly, Pat Wheeler sent in a letter that repeats her testimony and previous arguments, but which presents no new facts. Her arguments will be rebutted in the Applicants' Final Argument.

3. Response to Sarah Deumling Letter

Again, this letter repeats prior testimony and presents no new facts or evidence. Her arguments will be rebutted in the Applicants' Final Argument.

4. Response to Sean Malone Submittal

The letter from Mr. Malone on behalf of the Friends of Polk County presents no new issues or arguments. All of these arguments have been fully addressed in the Applicants' submittals, and specifically the Applicants' Response to Recommendation and will be addressed further in the Applicants' Final Argument.

Mr. Malone did raise an objection to the Hearings Officer's determination to not consider certain material that did not conform to the submission process she established. This issue is moot, and it is surprising it was even raised, because the material that was not considered by the Hearings Officer was accepted into the Record in the Board hearing process.

As to the new material attached to Mr. Malone's letter, none of this information is site specific to the Subject Property, and none has any relevance for consideration here, and should be given no weight whatsoever.

The article on High Elevation Pinot is about Italian viticulture and how and where they can grow Italian Pinot Noir. Hardly any information of relevance here.

The Oregon Wine Press Article is a primer about the different AVA's in the State of Oregon, and its only relevance to this proceeding is a passage regarding the Eola-Amity Hills AVA that the majority of vineyards here are below 700 feet in elevation, far below the 900-1,065 foot elevation on the Subject Property.

The high altitude buzz article from the USA Today, is not helpful as it does not specify where it is referencing, or how high is high. The only important passage from this article is the admission that altitude does exert an influence on wine, something the Applicants' experts have made clear already.

Finally, the social media pages all relate to vineyards in Argentina, which absolutely has no bearing on what can be grown on the Subject Property.

These general articles are uninformative and generalized and can not compare to the weight to be given to the site specific examination of the Subject Property by our Oregon wine experts.

5. Response to Andrew Mulkey Letter

The letter from Mr. Mulkey on behalf of 1000 Friends of Oregon also presents no new issues or arguments. All of these arguments have been fully addressed in the Applicants' submittals, and specifically the Applicants' Response to Recommendation and will be addressed further in the Applicants' Final Argument.

As to the new material attached to Mr. Mulkey's letter, the soil information included is nothing new, as soil information has been in this Record since the beginning of the case. There is

no issue with the material submitted, except that it fails to take into consideration the abnormal ph levels in the soil that limit productivity. It has to be remembered in an Exception case it is assumed that resource uses can take place on the Subject Property, but that those uses are made impracticable by virtue of the activities and uses on surrounding lands. Because of this, the quality of the soil is for the most part irrelevant.

A large part of the material submitted comes from prior submissions from the Hearings Officer process (November 2019) and therefore was already in this Record and has already been rebutted and fully responded to.

6. Conclusion


For the most part the opponents of this application have submitted nothing new or relevant to these proceedings. Mr. Huggins, Ms. Wheeler and Ms. Deumling present no new evidence of a factual nature and simply re-argue points of contention.

Mr. Malone submits new information, but almost none of it is even slightly relevant here. What goes on in Italy and Argentina has nothing to do with growing grapes in Polk County. The article on the "abc's" of Oregon's AVA is a general primer on AVA's, and the only relevant part of this entire article to this case is the recognition that altitude does have an impact on the ability to grow grapes, something the Applicants' experts have been saying since the beginning of this process.

Mr. Mulkey simply submits a sheaf of papers that have already been accepted into this Record, considered and addressed and rebutted in prior proceedings. The soil information submitted is nothing new, perhaps this submittal is in a different format, but the soil information contained there is not new. The real problem with the generic NRCS soil study as was previously pointed out, is that it does not take into account deviations that are on the land itself. In fact, the NRCS report itself says that the information is not suitable for site specific planning because the data is obtained from aerial photometrics from miles in the sky. This flaw is evident here, as the soil data does not take into account the abnormal ph levels of this site due to the presence of bauxite, which has historically made resource use of this land unproductive.

Nothing of a factual nature submitted by the opponents in this matter is relevant to the determination of this application, and no weight should be given to it as this application is being decided.

Respectfully submitted this 10th day of August, 2020.



Wallace W. Lien, OSB No. 793011

Of Wallace W. Lien, PC

Attorney for Simmons Family Properties, LLC