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CPA 18-01 and ZC 18-02 - Simmons

Wallace Lien <WLien@lienlaw.com>

Thu, Aug 13, 2020 at 2:44 PM

To: "Mulder, Sidney" <mulder.sidney@co.polk.or.us>

Cc: Wallace Lien <WLien@lienlaw.com>

Sidney

Please file the attached Motion to Strike the new evidence submitted by Mulkey yesterday long after the time for filing new evidence has expired in to the Record of this case. I assume the Board can/will rule on the motion in October when it makes its final decision.

Thanks

Wally

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 **24 - Motion to Strike.pdf**
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BEFORE THE BOARD OF COMMISSIONERS
FOR
POLK COUNTY, OREGON

RECEIVED
AUG 13 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
MOTION TO STRIKE NEW EXHIBITS
SUBMITTED BY
1000 FRIENDS OF OREGON

COMES NOW the above named applicants, by and through Wallace W. Lien, of Wallace W. Lien, PC, and does hereby file this Motion to Strike New Exhibits Submitted by 1000 Friends of Oregon attorney. No new evidence is allowed to be accepted after the close of business on August 5, 2020 as mandated by the Board procedural ruling, therefore the several Capital Press articles submitted on August 12, 2020 are not timely and should not be accepted into the Record of this case.

The procedure established by the Board of Commissioners for post hearing submissions allowed new evidence to be entered in this Record only until the close of business on August 5, 2020. The process allowed for a rebuttal response by each party to any new evidence submitted until the close of business on August 12, 2020, however it was made clear that no new evidence would be accepted after August 5, 2020. The period between August 6, 2020 and August 12, 2020 was given only for rebuttal argument.

In fact, Mr. Mulkey, on behalf of 1000 Friends submitted new evidence on August 5, 2020 in accordance with the mandated schedule. All of the new material being submitted now certainly could have been submitted in a timely fashion. The first Capital Press article is dated November 28, 2019, the second is dated May 23, 2019, and the third is dated August 21, 2010, all of which were then available to Mr. Mulkey to submit in a timely fashion. Even the last article is dated August 5, 2020, and therefore was available for submission on the last day of the evidentiary open record

period.

Mr. Mulkey makes no effort in this late submittal of new evidence to justify his violation of the submittal protocols in this case. He makes no motion to reopen the evidentiary record, he simply attempts to file new evidence late for what only appears to be an attempt to create an appeal issue, and/or to delay further processing of this case.

Late submissions by the opponents in this case is nothing new. They attempted late evidentiary submissions to the Hearings Officer, and she correctly rejected those submittals as being evidence that was not timely filed under her rules of procedure. This Board should follow suit and reject this latest submission of new evidence.

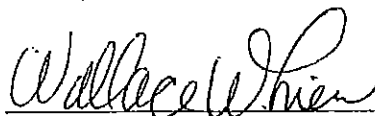
The 1000 Friends submittal is a blatant violation of the process established by the Board for handling the open record period. The process was clearly set forth during the hearing process, including the admonition that no new evidence was to be accepted after the close of business on August 5, 2020.

The submission of new evidence at this late date in time is highly prejudicial to the Applicants' as they have no ability under the established rules to submit any new evidence in rebuttal. This case is now into Final Argument, and that should be based only on evidence that was timely filed and arguments that were made in accordance with the mandated process.

All of the material submitted in the second Mulkey letter has to be rejected and not considered in order to maintain the correct process and to avoid substantial prejudice to the Applicants.

In the event the Board accepts these Capital Press articles at this late date, Applicants will address the relevancy and merits of that material in their Final Argument, but will do so without waiver of its rights to have the untimely new material not accepted into this Record.

Respectfully submitted this 13th day of August, 2020.



Wallace W. Lien, OSB No. 793011

Of Wallace W. Lien, PC

Attorney for Simmons Family Properties, LLC