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PA 18-01 & ZC 18-02

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To: mulder.sidney@co.polk.or.us
Cc: Debra Collada <debra@cubanisimovineyards.com>

Sat, Oct 17, 2020 at 9:54 AM

Dear commissioners, and Polk County decision makers:

Nothing has changed since this request to change the zoning was first brought forth.

There are no new water sources, and this zoning change will compromise the water available since we are well dependent.

Those of us who made commitments to do agriculture due to previous zoning requirements should not be punished for having done so.

Respectfully,

Mauricio Collada Jr.

RECEIVED
OCT 19 2020
POLK COUNTY
COMMUNITY DEVELOPMENT

Sean T. Malone

Attorney at Law

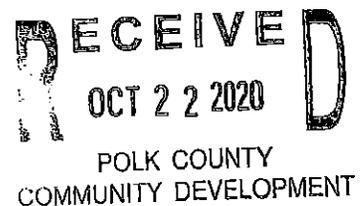
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October 22, 2020

Via email

Polk County Board of Commissioners
c/o Polk County Community Development
Polk County Courthouse
850 Main Street
Dallas Oregon 97338
mulder.sidney@co.polk.or.u



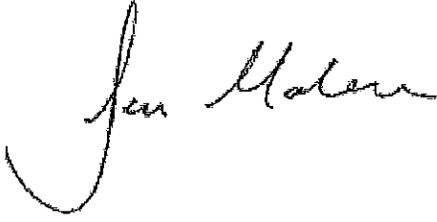
Re: Friends of Polk County further open record testimony for the Simmons *et al.* request for zone change, plan amendment, and irrevocably committed exception to Goals 3 and 4, PA 18-01 and ZC 18-02 regarding disclosed ex parte contact.

On behalf of Friends of Polk County, please accept this further open record testimony regarding the ex parte contact issue.

The substance of the ex parte contact has been disclosed and placed in the record. Moreover, the substance of the ex parte contact does not appear to be inadequate. As such, the ex parte contact does not appear to violate ORS 215.422(3). Therefore, the ex parte contact will not formulate the basis for any reversal or remand on review and it is not necessary for the commissioner to recuse himself.

This open record period cannot be used to include further materials or evidence in the record related to the merits of the application.

Sincerely,

A handwritten signature in cursive script that reads "Sean T. Malone". The signature is written in black ink on a white background.

Sean T. Malone
Attorney for Friends of Polk County

Cc:
Client

BEFORE THE BOARD OF COMMISSIONERS
FOR
POLK COUNTY, OREGON

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)

R E C E I V E D
NOV 03 2020

POLK COUNTY
COMMUNITY DEVELOPMENT

APPLICANT'S
FINAL REBUTTAL TO EX PARTE
COMMUNICATION

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 the ex parte communication received by Commissioner Mordhorst from Kathy Hadley.

To begin with, it must be noted that Ms. Hadley had many opportunities during the 2 year pendency of this case to make comments on the Record, and instead choose this untimely method of expressing herself. Had she participated in the many hearings and open record periods, and reviewed the detailed reports and documents submitted, she would understand that her concerns are not well founded.

Had Ms. Hadley looked at Exhibit X to this application she would have seen the extensive hydrogeologic study performed by Mr. Rehm, a registered professional engineer that indicated the recharge rate for the area allows for adequate domestic well production for the AF-10 zone on the Subject Property, confirming the findings and conclusions of another hydrogeologist from the first application which is also in this Record. She would also have found that the Subject Property will be partially served by connections to Orchard Heights Water Association, thereby lessening any potential impacts.

Finally, Ms. Hadley would have read the Hearings Officer's Findings and Conclusions that:

Mr. Rehm's hydrology study focused on seven key points including; 1) basalt is a good aquifer for drawing water for a rural residential water well; 2) the Columbia River Basalt extends equally into the Salem Hills and Eola Hills; 3) Basalt rock layering is the same in the Salem Hills and Eola Hills; 4) groundwater recharge is the same in the Salem and Eola Hills; 5) the structural geology in the Salem Hills and Eola Hills is the same; 6) hydrology in the Salem Hills and the Eola Hills is the same; and 7) there has been recent site work in the Orchard Heights Area. The submitted hydrology study also includes an evaluation of "The Water Budget", which demonstrates that even with up to 19 new home sites, the remaining recharge would be 79.9%. Mr. Rehm indicates that value of the recharge is very high because the Orchard Heights area is a very spread out rural area; new residences on the subject property would be on large lots (10 acres); and domestic water use would follow water use practices of 525 gallons per day, per household.

... the submitted hydrology report was stamped with Mr Rehm's Oregon Registered Professional Geologist stamp and the Hearings Officer finds Mr Rehm to be a credible professional who has determined that there is available water to serve future residential development on the subject properties. Full details of this hydrology report are included as Exhibit X in the record. For this reason, the Hearings Officer finds that the Applicants have demonstrated that there is adequate water which meets the standards of the State Department of Health. Recommendation Page 38. Emphasis Supplied.

Similarly, had Mr. Collada, who submitted an open record comment, read any of the Record in this case relating to the lack of impacts on surrounding properties by allowing domestic water wells needed for this project, he would understand that this project will have no adverse impacts on any aquifer, or any nearby wells, springs, creeks or streams.

As was pointed out in the Final Argument in this case as to the comments of Mr. Huggins, all issues related to water, including recharge rate, impact on surrounding creeks and springs was studied by the engineers and found not to be impacted by the addition of domestic water wells as proposed here.

Neither Ms. Hadley, nor Mr. Collada, offered any hard evidence regarding water. They simply stated their lay opinion, without any factual data to back it up. Compare their testimony to that offered by the Applicants, which included two full hydrogeology studies. In the weighing of evidence in a land use case it is impossible to select the off-handed comments by project opponents, over that of the independent professional reports submitted on behalf of the Applicants.

Ms. Hadley also stated she is concerned about the incompatibility of this project with

adjacent farmland. Again, Ms. Hadley offered no facts or evidence to support her concern. Had she participated in this case during its pendency, she would have heard testimony and read the reports and memorandum on this subject that establishes the only actual farmland that is in the area is the vineyard to the west, and that vineyard will not be adversely impacted by this project.

There will be no impacts from this project to the vineyard because of the dramatic change in elevation between the vineyard property located on the flat land, and new parcels that would be created on the Subject Property some 800-900 feet higher in elevation. The steepness of the slope and the sheer distance between the new home locations at the upper elevations and the vineyard property below basically eliminate any potential conflicts between the two uses. The area along the vineyard will remain basically the same vegetative brushed and treed buffer area it has always been.

In addition, with the AF-10 zoning the minimum parcel size will be 10 acres, which means the parcels created here will be much larger than other parcels in the area and near EFU properties in the AR-5 zone which can be 5 acres or less. The larger the parcel, the lesser potential for conflicts between rural residential folks and vineyard owners because of the sheer distance.

Further, the proposed new lots will be subject to county deed restrictions, and the private Covenants, Conditions and Restrictions which eliminate the possibility for conflicts and complaints of the new owners with adjoining properties.

The post-record-closure comments are shallow attempts to cast doubt on a good quality application. The highest and best use for the Subject Property is for these 10 acre or larger rural residential homesites. There is nothing in the empty comments submitted after this Record was closed that detracts from all the factual evidence supporting its approval.

This application should be approved.

DATED this 3rd day of November, 2020.

Wallace W. Lien

Wallace W. Lien, OSB No. 79-3011
Attorney for the Applicants