

1 **BEFORE THE BOARD OF COMMISSIONERS**  
2 **FOR THE COUNTY OF POLK, STATE OF OREGON**

3  
4 In the matter of Plan Amendment PA 18-01 and )  
5 Zone Change ZC 18-02 that would deny a proposal )  
6 to amend the Comprehensive Plan Map and Zoning )  
7 Map for approximately 228 acres consisting of seven )  
8 parcels located at T7S, R4W, Section 14, Tax Lots )  
9 601, 602, 603, 604 and 605 and T7S, R4W, Section )  
10 23, Tax Lots 100 and 101 (Exhibit A) )

11  
12 **ORDER NO. 20 - 17**  
13

14 **WHEREAS**, The applications for PA 18-01 and ZC 18-02 were submitted on  
15 December 14, 2018; and

16 **WHEREAS**, On October 8, 2019, Staff included in the record their Staff Report and  
17 conclusion, based on the evidence in the record, that the application does not comply with all of  
18 the applicable review and decision criteria; and

19 **WHEREAS**, On October 15, 2019 a public hearing was conducted before the Hearings  
20 Officer, with due notice of the public hearing having been given, and an opportunity was  
21 provided for public comments and testimony. There were no objections as to notice or  
22 jurisdiction. The Hearings Officer allowed all parties to be heard and to submit an unlimited  
23 amount of written materials. On June 1, 2019 the Hearings Officer issued a recommendation to  
24 the Board of Commissioners to deny the applications, included as Exhibit B; and

25 **WHEREAS**, The Board of Commissioners held a public hearing on July 22, 2020, with  
26 due notice of the public hearing having been given, and they provided an opportunity for public  
27 comments and testimony. There were no objections as to notice or jurisdiction. The Board  
28 allowed all parties to be heard and to submit an unlimited amount of written materials. At the  
29 public hearing, the Board announced that additional evidence could be submitted into the  
30 record until August 5, 2020 at 5:00 P.M.; rebuttal of any evidence that was submitted during  
31 the two-week open record period could be submitted until August 12, 2020 at 5:00 P.M.; and  
32 final arguments by the Applicants could be submitted until August 19, 2020 at 5:00 P.M, at  
33 which time the record closed. A deliberation date of October 7, 2020 was announced at the  
34 public hearing; and

35 **WHEREAS**, On October 7, 2020 at the scheduled deliberation, Polk County's Legal  
36 Counsel announced that ex parte communication occurred on September 26, 2020, when a  
37 constituent individually contacted Commissioner Mordhorst and commented on this matter  
38 after the record was closed. A transcript of the communication was provided and Commissioner  
39 Ainsworth and Commissioner Pope moved to re-open the record to allow additional testimony  
40 to be submitted into the record in response to the ex parte communication. A rescheduled  
41 deliberation date was announced for December 9, 2020; and

42 **WHEREAS**, On October 14, 2020 staff sent notice to all interested parties specifying a  
43 new open record period timeline. Additional evidence could be submitted into the record  
44 between October 15, 2020 and October 22, 2020 at 5:00 P.M. to rebut the content of the ex

1 parte communication; rebuttal of any evidence that was submitted during the one-week open  
2 record period could be submitted until October 29, 2020 at 5:00 P.M.; and final arguments by  
3 the Applicants could be submitted until November 5, 2020 at 5:00 P.M, at which time the  
4 record closed. The transcript of that ex parte communication was included in the notice and in  
5 the record; and

6 **WHEREAS**, The Board reviewed and considered all of the additional testimony and  
7 evidence that were submitted into the record after the Hearings Officer's recommendation was  
8 issued and finds that, even when considering the additional evidence in favor of the application,  
9 the Hearings Officer's findings are adequate and the additional evidence does not support a  
10 conclusion other than the conclusion of the Hearings Officer; and

11 **WHEREAS**, On December 9, 2020 the Board fully and openly deliberated this matter  
12 and having reviewed the testimony and other evidence in the record, and, based on the Staff  
13 Report, the Hearings Officer's recommendation, the testimony, and evidence in the record, denied  
14 the applications; now therefore,

15  
16 **THE POLK COUNTY BOARD OF COMMISSIONERS ORDERS AS FOLLOWS:**  
17

18 Sec. 1. That Polk County Board of Commissioners adopt the Hearings Officer's  
19 recommended findings and conclusions, included as Exhibit B, and deny the applications for  
20 Plan Amendment (PA) 18-01 and Zone Change (ZC) 18-02.

21 Sec. 2. An emergency is declared, and the provisions of this order become  
22 effective upon its adoption.

23 Dated this 23<sup>th</sup> day of December, 2020 at Dallas, Oregon.  
24

25 **POLK COUNTY BOARD OF COMMISSIONERS**

26 \_\_\_\_\_  
27 Mike Ainsworth, Chair

28 \_\_\_\_\_  
29 Craig Pope, Commissioner

30 \_\_\_\_\_  
31 Lyle Mordhorst, Commissioner  
32  
33  
34

35 Approved as to Form:  
36  
37

38 \_\_\_\_\_  
39 Morgan Smith  
40 County Counsel