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**HOOD RIVER COUNTY COMMUNITY DEVELOPMENT  
PLANNING COMMISSION HEARING TRANSCRIPTION**

**Wednesday, December 13, 2017 – 5:30 p.m.**

Edited by Kim Paulk, Office Manager

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**Appeal #415-17-0272 of Extension #415-17-0195**

Vice Chair

von Lubken: This will be a quasi-judicial hearing. The appeal of the Valley Residence Committee of the Planning Department for one year extension for the permit 13-021 issued in 2014. Are there any meeting minutes?

Mr. Roberts: Yes. Kim just passed them out, did you get it?

Vice Chair

von Lubken: Yeah.

Mr. Roberts: Okay.

Vice Chair

von Lubken: Do we need to approve those?

Mrs. Paulk: They're done in verbatim by transcript. So it's just more of a there they are.

Vice Chair

von Lubken: Okay. Directors report.

Mr. Roberts: So I never know what to report on.

Commissioner

Weathers: Tell us how busy you are John.

Mr. Roberts: I'm getting there. But in that vain we could go significant gaps without seeing you all and if something comes up don't hesitate to contact us just about anything. Something you over hear in Rosauers [inaudible 00:01:12]. And if it's applicable to the entire commission just email me back, and bring me up to speed, and let you know what we know. So don't be a stranger. We're always available to answer any questions because as Commissioner Weathers alluded to we're busy. So I looked at the permits back to 2011 and we're pushing 340 permits this year and that's going to be 120 more than in 2012. So I think it's easy to just look at this sort of increase in permits but what gets lost in that just the stuff you don't see, which is how compounded all our work is.

That's that many more phone calls, that much more research, that many more applicants that come in that have questions that don't turn into applications. So that's a real big workload for us. So looking at it about 340 permits. So the only other thing I'd mention is

1 we already have two planning commission meetings scheduled for January. January 10th  
2 we're going to hear an STR appeal and then January 24th we're going to start hearing and  
3 talking about some legislative events. So, yeah. Put that on your calendar. And if something  
4 comes up and you know you're not going to be able to make those meetings just let us  
5 know.  
6

7 Vice Chair  
8 von Lubken: Will?

9  
10 Mr. Carey: Just to mention that we're being pretty active down at LUBA. This coming, what is it?  
11 Tuesday?

12  
13 Mr. Roberts: Thursday.

14  
15 Mr. Carey: Thursday the 21st, we have two planning cases that we filed response briefs on it and they  
16 involve the issue of the decisions via the planning director on short term rentals. And  
17 whether or not that decision is an administrative decision or a land use decision. And so we  
18 should know at the end of this hearing what LUBA has to say. So we'll argue that on  
19 Thursday and usually is two or three weeks before we get a response back from LUBA.  
20

21 Vice Chair  
22 von Lubken: Is that it?

23  
24 Mr. Carey: That's all I have.  
25

26 Vice Chair  
27 von Lubken: Okay. So is there anything from the general public? From commissioners? Anything?  
28

29 Commissioner  
30 Weathers: So just for clarification you mean anything outside of...

31  
32 Vice Chair  
33 von Lubken: Correct.  
34

35 Commissioner  
36 Weathers: tonight's hearing.  
37

38 Vice Chair  
39 von Lubken: Right. Okay. Like I said this is a quasi-judicial hearing of Valley Residents Committee appeal  
40 of the Plan Departments decision for a one year extension. Although this hearing at this  
41 time. The first order of business it to determine the qualifications of the board and the  
42 Planning Commissioners to actively [inaudible 00:05:13]. Does any of the commissioners  
43 have any potential or actual conflicts of interest in this matter?  
44

45 Commissioner  
46 Weathers: No.  
47

48 Vice Chair

1 von Lubken: Do any of the commissioners have any ex parte hearing, pre-hearing contacts [inaudible  
2 00:05:27]? Do any of the commissioners have any personal bias in this matter?  
3

4 Commissioner  
5 Weathers: No.  
6

7 Commissioner  
8 Gehrig : No.  
9

10 Vice Chair

11 von Lubken: Does anyone in the audience wish to challenge the qualifications of any member of this  
12 board? Before we begin this hearing I'd like to announce several guidelines for those  
13 participating in the hearings. The guidelines are required by the state of law as follows.  
14 Testimony may be only addressed the applicable approval criteria. Applicable approval  
15 criteria were listed in the notice of the hearing and will be presented in the staff report.  
16 Any party that requests the record to be kept open for seven days following the hearing.  
17 Any party is entitled to request a continuance if new information is submitted in support of  
18 the application.  
19

20 In order to appeal an issue you must state the issue clearly and in enough detail that the  
21 board of commission to consider the issue in making a decision. Raise it or wave it. Chair  
22 describes the procedure of this hearing. We will first hear a staff report. Then the applicant  
23 who has the burden of proof to show that the approval criteria is satisfied will go second.  
24 Actually the applicants going to go first this time correct?  
25

26 Mr. Carey: Yeah.  
27

28 Vice Chair

29 von Lubken: Okay. Then the applicant, those in favor, and then the opponent, the appellant, will go  
30 next. We'll then allow rebuttal by both parties. Interested agencies then questions by the  
31 decision makers. Then the hearing will be closed to no further testimony. Allow the board  
32 of commission to deliberate and then make a decision and can continue the hearing to a  
33 date certain and finalized decision in a continued hearing. Rules of the hearing. This hearing  
34 is being recorded. So it is necessary for everyone who is offering testimony to step to the  
35 podium, state your name and address prior to commencing your testimony. We'll have a  
36 sing up sheet for both proponents and opponents.  
37

38 Please sign in if you plan to give testimony. Your ten minute period will be allotted to each  
39 person. If someone needs more, please ask. Please avoid repetitive and redundant  
40 testimony, testimony, which is not relevant to the matters of the issue. Please refrain from  
41 demonstrations and support or either side. No clapping, cheering, jeering will be allowed.  
42 We ask that you be courteous and orderly at this hearing. Are there any questions  
43 concerning the proceedings or rules that I've covered? If not we will hear the staff report.  
44 Eric.  
45

46 Mr. Walker: Thank you Mr. Chair and Commissioners. As noted we're here tonight to consider an appeal  
47 filed by the Hood River Valley Residence Committee of the County Planning Departments  
48 decision to grant a one year extension of an approved commercial land use permit issued in  
49 2014 for the construction and operation of an amphitheater, for outside concerts, and

1 other commercial events at the former Dee mill site. Given that both sides in this appeal  
2 have highly qualified representation I don't plan on spending a lot of time on this summary  
3 but I did want to emphasize a few general points. First of all the county zoning ordinance is  
4 very explicit that permit extension shall be processed as ministerial actions.  
5

6 And as just a reminder ministerial action or type one review essentially is an in house  
7 decision, it doesn't require any outside notice, there is no staff report or findings to support  
8 the decision, and opportunities for appeal are typically not provided. The criteria to  
9 approve extensions were intentionally developed to be applied without having to use  
10 interpretation or to exercise a policy or a legal judgment. Essentially all the criteria can be  
11 answered with a yes/no answer. Although the Planning Department has allowed this  
12 appeal to be heard, as a precaution, given the unique circumstances surrounding the  
13 property, staff maintains its position that the Planning Departments decision to approve  
14 the outcome from an extension does not involve a discretionary land use decision.  
15

16 As provided in section 1.140 of the County Zoning Ordinance there are four succinct  
17 standards that apply to this permit extension. One was the extension request filed in a  
18 timely manner? The answer is yes. The permit was set to expire on September 9th of this  
19 year. The extension request was sent by the applicant on July 14th nearly two months prior  
20 to the permits' expiration. Two, was the extension properly requested and was the  
21 appropriate fee paid? The answer to these two questions is both yes. The extension  
22 request was received by the applicant in writing and included the permit file number and  
23 reasons for needing the additional time. The appropriate fee for the extension was also  
24 received.  
25

26 Three, do county or state laws prohibit the extension? The answer is no. There is nothing in  
27 the county zoning ordinance or state law that prohibits the granting of an extension for an  
28 approved commercial land use permit. In fact, condition 50 of the applicants original permit  
29 clearly states that it is eligible for one or more extensions as long as they are requested  
30 prior to the permits ultimate expiration, which is what occurred in this case. Finally, four,  
31 have any applicable county or state laws changed that would prohibit the approved use?  
32 The answer is no. The appellants argues that a recent LUBA opinion and order to remand the  
33 counties decision involving the approval of a 50 unit hotel located on the subject parcel  
34 resulted in the modification of the applicable laws concerning commercial business on an  
35 industrial loan land.  
36

37 Staff disagrees. LUBA's decision is not a state goal, policy, statute, or rule. Nor did it change  
38 the Hood River County Comprehensive Plan or a County regulation. To argue otherwise  
39 would be a stretch given the explicit language in the standard which only talks about  
40 county or state laws being changed. And not about LUBA opinions concerning how existing  
41 county or state laws are to be applied and/or interpreted. So based on this information, the  
42 information provided as part of the staff, court dated November 30, 2017, Staff  
43 recommends that this appeal be denied. Thank you.  
44

44 00:12:05

45 Vice Chair

46 von Lubken: Okay. We will hear from the applicant first.  
47

48 Mr. Robinson: Mr. von Lubken before I start, I've made a copy of the extension criteria and I'm sure you  
49 want one more piece of paper but [crosstalk 00:12:27].

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Vice Chair

Von Lubken: The shredder will like it very nice.

Ms. Darzen: Thank you.

Mr. Robinson: And I brought enough for staff as well.

Commissioner

Euwer: Thank you.

Mr. Robinson: So good evening. My name is Michael Robinson. I'm a land use attorney. I represent the applicant. [inaudible 00:12:53] one of these applicants. My mailing address is 1120 Northwest Couch Street. Couch is spelled C-O-U-C-H. 10th floor, Portland, Oregon 97294-128. So we agree the Planning Commission should affirm the Planning Director's decision approving the extension of the permit to construct the amphitheater. And this is so because as we will exclaim in our presentation, the applicant has satisfied the applicable approval criteria. And as Eric said there are only four of them. There's really only two potential criteria at issue here.

We've satisfied those with substantial evidence. I gave you and I apologize for the lateness, I gave you a letter answering some of the questions asked by the appellant in their December 8<sup>th</sup> letter. It arrived today and we have a paper copy physically for you. So I think it's helpful to set up what this appeal is about and what it's not about in our opinion. We think it's really about one thing: Did the director correctly decide that the permit extension meant the approval criteria for approval. And we think the answer is yes. And you're going to be called upon tonight to decide what [inaudible 00:14:02] uses the word change. Now when you look at the testimony that's been submitted and listen, as I expect you will hear, to our arguments tonight.

The main argument they make is that because LUBA applied existing law a different way, that represents a change. That's inconsistent with the claim language of 1.14084. It says change. And that means change to the length. If the Board of County Commissioners, which adopted that criteria wanted also include has it been applied in a different way, they would have said so but the language doesn't require that. That's not what a plain reading of the language means. So it can only be found that, that criteria isn't met if one of those factors in sub four has changed since the 2014 decision by the director approving the permit. What is this appealer not about?

Well, it's not a rehash of the 2014 decision. It seems obvious but it's only about 2017 permit extension, the second permit extension. And I apologize, I say this not to insult anyone or to discourage citizen participation. Goal one requires it and we support it. It's also though not based on how many people support the appeal. You know that but I think it's helpful to remind the decision maker, it's solely focused on this approval criteria and whether we, the applicant, have met our burden of proof. If you find that we have, you must approve the Director. You must reject the appeal and approve the Director's decision. So I think it's helpful to point that out.

1 It doesn't mean I don't appreciate what we hear from folks who are interested in this. It's  
2 just simply not the will of the room that makes the decision. So let me talk then a little  
3 more about the application. First of all, we obviously agree with the staff report and its  
4 recommendation. I think Eric laid it out nicely and I think the key thing is that none of the  
5 approval criteria have changed. And that's really what sub four is all about. Let me see what  
6 else I want to say before I move on to ... Well I think it's worth mentioning and I'll just  
7 repeat it. And Eric noted it. We're not really talking about sub one and sub two tonight.  
8

9 The appellants haven't raised that. There's no indication the application didn't meet those  
10 criteria and really their appeal only addressed sub four but we've addressed sub three as  
11 well because I think that's also relevant to talk about. So let me mention one other thing  
12 and then I'll get into the criteria. This is also a matter of state law. There are times when  
13 you're going to apply law that's enacted by LCDC or the Oregon legislature and so you really  
14 can't say what it actually means. That's up to the courts or the body that enacted it but in  
15 this case you're dealing with legislation that was enacted by the Board of County  
16 Commissioners.  
17

18 So should this get to the Board of County Commissioners on appeal LUBA, in the event of  
19 an appeal, their decision will be of the difference under ORS 197.829 sub one. In other  
20 words, because they enacted the language they get to say what it means. And I'm confident  
21 that if this reaches them, they will read it the same way not only that the applicant has but  
22 the staff has. The change means an actual physical amendment to the language, not the  
23 way it's been applied. So let me talk about 114.083 first. That requires the applicant to  
24 demonstrate that the county ordinance, which means the Hood River County Zoning  
25 Ordinance or state law, does not prohibit the extension.  
26

27 There is no local law or state law that I'm aware of that prohibits this extension. There's  
28 nothing cited in the staff report. There's nothing cited in the appellant's testimony that I've  
29 read that leads through now. So I think the Planning Commission can answer the question  
30 that we satisfied that criteria by demonstrating there's nothing in state or local law that  
31 prohibits the extension. Second criterion we're here to talk about tonight is sub four. And  
32 that's why I handed you the language so that you'll have it. Let me just get it. It says "the  
33 approval criteria for the original decision on founding a state goal, which means the state  
34 wide planning goal, statute, or administrative rule, state policy, the county comprehensive  
35 plan, or this ordinance have not changed."  
36

37 So we submitted a letter in November to staff and you have it physically in front of you as  
38 part of your packet that looked at each of those standards. State wide planning goals,  
39 administrative rules, state policy. Although, to be honest with you, I'm not quite sure what  
40 that means but we looked at that issue by talking to LCDC, and DLCD, the state statute, and  
41 your plan, and your code. And from the September 2014 date in which the Planning  
42 Director approved the amphitheater through the date this applicant applied for the second  
43 extension, none of the relevant approval criteria applied to the original decision to change.  
44 In other words none of them were amended.  
45

46 So that's why you have this very thick letter from us that has all of the relevant evidence  
47 demonstrating that those criteria as they existed in September 2014 are the same as they  
48 existed in 2017 when the applicant applied for and was granted the second extension. So  
49 we think you can find that, that standard is met by the applicant. Now let me respond, if I

1 could, to the appellants arguments. First they argue that the county approval criteria has  
2 changed and I said, it's not how it's applied. It's not what the language of sub four says. Has  
3 it been changed? And substantial evidence before you demonstrates that no, none of those  
4 county criteria have been changed.

5  
6 The same is true for state laws, state wide planning goals, administrative rules adopted by  
7 LCDC, the statute and state policy. They're all the same physically and they all say the same  
8 thing now as they said in 2014. You would know, for example, if a state law has changed  
9 because you would have something different in the statute, you would have something  
10 different in administrative rules. We looked at those. We talked to DLCD and assured  
11 ourselves that was not the case, that no changes had been made. The appellants and their  
12 supporters really think that what change means is how the law is applied but that's not  
13 what the law is looking at in this case.

14  
15 And if you think about it, what the county wants to know is, well when we approve this in  
16 2014, we did it applying X, Y, and Z criteria. We want to know before we grant that  
17 extension if X, Y, and Z criteria have changed. If they haven't, we'll grant the extension. If  
18 they have, then maybe the applicant needs to reapply under the new criteria. That's what  
19 your code means. I think your staff agrees with that meeting and I'm confident that, that's  
20 how the board would read it. The appellant has heard that the LUBA decision from this  
21 June regarding the hotel means that the standards changed. And that's not the case. I think  
22 a generous reading of LUBA's opinion is that the existing laws, as they've always existed,  
23 didn't allow the county to approve the hotel.

24  
25 That doesn't mean they've changed. It just means in LUBA's opinion the county made an  
26 error by approving the hotel. LUBA's opinion is not a change in any of those laws. And I  
27 would note that 1.14084 doesn't include in those list of factors that this body must  
28 considered LUBA's opinions or court opinions. It doesn't do that. So LUBA's opinion is  
29 irrelevant. It didn't change anything because at most what LUBA did was apply existing law.  
30 So you can also find that sub four is satisfied because none of those criteria have changed  
31 as the code requires us to demonstrate. So you have before you a Directors decision that's  
32 properly issued and supported by substantial evidence in the form of our November 2017  
33 letter with, I think, four exhibits, which is all of the evidence I've been describing to you.

34  
35 And then our argument letter that was submitted tonight. There's absolutely no reason to  
36 grant the appeal and for those reasons Chair von Lubken, we would ask that you reject the  
37 appeal for the directors decision and approve the second permit extension. Before you  
38 close the record tonight if you have questions of the applicant, either myself, or my friend  
39 here please ask us. We don't want to miss an opportunity to answer a question that you  
40 bring up after the record is closed. We don't have any other comments, of course we'll do  
41 rebuttal after we've heard from folks that are here tonight and hopefully respond to their  
42 questions as well. And we thank you for your time tonight.

43  
44 Vice Chair  
45 von Lubken: Thank you. Anybody else for the applicant.

46  
47 Mr. Robinson: I think that's it on our side.

48  
49 Vice Chair

1 von Lubken: Okay. Perfect.  
2  
3 Mr. Robinson: Thank you.  
4  
5 Vice Chair  
6 von Lubken: For the appellant.  
7  
8 Ms. Darzen: Good evening members of the Planning Commission. My name is Meriel Darzen. I'm an  
9 attorney for 1000 friends of Oregon, but I'm here representing the appellant of the River  
10 Valley Residents Committee. So before I get going I think the appellant would like to  
11 request a continuance of this hearing to a fixed later date. I'm not sure if now is the  
12 appropriate time to request that, but we'll just get it on the record now.  
13  
14 Mr. Carey: I couldn't understand the request.  
15  
16 Ms. Darzen: Oh. For a continuance to a date certain based on not having the full Planning Commission  
17 here tonight.  
18  
19 Mr. Carey: Well that request should have been made before we commenced the-  
20  
21 Ms. Darzen: Oh we did make it actually. We made an email request to planning staff. And I believe the  
22 applicant also made a request and neither were able to be evaluated until tonight.  
23  
24 Mr. Carey: Okay. Your request then would be considered by the commission.  
25  
26 Vice Chair  
27 von Lubken: Do we need to take a vote on that?  
28  
29 Mr. Carey: And decide yes.  
30  
31 Vice Chair  
32 von Lubken: We need to have a motion and a second.  
33  
34 Mr. Carey: Mm-hmm (affirmative).  
35  
36 Vice Chair  
37 von Lubken: Is there a motion for continuance?  
38  
39 Commissioner  
40 Euwer: I'll move that we have a continuance.  
41  
42 Vice Chair  
43 von Lubken: Is there a second?  
44  
45 Commissioner  
46 Gehrig: I'll second.  
47  
48 Vice Chair  
49 von Lubken: Moved and seconded.



1  
2 Mr. Robinson: Well wait a minute. You're not voting to continue tonight. That's not what I think she's  
3 asking for. May I ask a question?  
4  
5 Vice Chair  
6 von Lubken: Sure.  
7  
8 Mr. Robinson: So you've commenced the hearing. Of course, you do. What the statute provides for is that  
9 prior to the closure of the hearing the party can ask that either the hearing be continued or  
10 the record held open but your vote doesn't mean you would stop the proceedings and  
11 conduct it at another hearing date.  
12  
13 Commissioner  
14 Gehrig: You'd be staying on the record right now.  
15  
16 Ms. Darzen: Right. Yeah. I'm just-  
17  
18 Mr. Robinson: To make it clear.  
19  
20 Ms. Darzen: Yep. Yeah.  
21  
22 Mr. Robinson: [crosstalk 00:24:40]  
23  
24 Ms. Darzen: Agreed.  
25  
26 Mr. Carey: They can ask for a seven day continuance to submit new written material.  
27  
28 Ms. Darzen: Yeah.  
29  
30 Mr. Robinson: I'm sorry. Go ahead.  
31  
32 Ms. Darzen: I'll go first. To make it clear we're not asking for just the record to be held open. We're  
33 actually asking that there be another Planning Commission hearing in which the record is  
34 open because that there's only five members here instead of seven. Go ahead.  
35  
36 Mr. Robinson: Thank you. So Chair Bobalucan you have a choice under the statute. You can either  
37 continue the hearing to a date certain or you can leave a written record open. The  
38 applicant will not extend the clock if you continue the hearing. We understand you need to  
39 come back and make a decision but we will extend the clock if you leave the written record  
40 open, close it at the end of that period that you choose, and then you come back to  
41 deliberate at a different meeting.  
42  
43 Vice Chair  
44 von Lubken: Okay. So we need four affirmative votes to either continue.  
45  
46 Mr. Carey: That's correct.  
47  
48 Vice Chair  
49 von Lubken: Just to continue. If we don't get four affirmed votes then we keep on going right?

1  
2 Mr. Carey: Correct.  
3  
4 Vice Chair  
5 von Lubken: Okay.  
6  
7 Commissioner  
8 Euwer: Well if we vote for a continuance does that mean that we stop now and come back at a  
9 later date? Or does that mean that we would have to continue this after this meeting?  
10  
11 Mr. Walker: The hearing has already been open to turn in.  
12  
13 Commissioner  
14 Euwer: Right.  
15  
16 Mr. Carey: And so if there's going to be a continuance [inaudible 00:26:06] hearing.  
17  
18 Commissioner  
19 Euwer: All right. All right.  
20  
21 Commissioner  
22 Dow: So regardless of what we determine or this equal there would be a continuance? Or only if  
23 there is not-  
24  
25 Mr. Carey: I can't understand what you're asking.  
26  
27 Commissioner  
28 Dow: If we vote yes for a continuance there will be a continuance regardless of what happens  
29 this evening as far as this appeal goes.  
30  
31 Commissioner  
32 Gehrig: We would just hear information this evening. We wouldn't vote.  
33  
34 Commissioner  
35 Dow: There would be no decision, I see. Just leave it open. The whole thing.  
36  
37 Commissioner  
38 Gehrig: We'll hear both sides. There'll be another part of the hearing. We can decide that or just  
39 [inaudible 00:26:48] for end. And then they can submit more stuff and we can read it.  
40  
41 Commissioner  
42 Dow: Okay.  
43  
44 Mrs. Staten: So what we're specifically requesting is under ORS 197-763 for, sorry, six sub B. We're  
45 requesting a continuance to a date, time, and place certain. And according to the statute  
46 any participant may request an opportunity to present additional evidence, arguments, or  
47 testimony regarding the application. The local hearing's authority will grant such a request.  
48 So you, as Mr. Robinson said, you have two options in terms of the hearing to continue.  
49

1 Mr. Robinson: Well we can have the hearing tonight or we can continue.  
2  
3 Ms. Darzen: Right.  
4  
5 Vice Chair  
6 von Lubken: Okay. Commissioner Gehrig.  
7  
8 Commissioner  
9 Gehrig: Yes.  
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11 Vice Chair  
12 von Lubken: To what?  
13  
14 Commissioner  
15 Gehrig: To permit the-  
16  
17 Commissioner  
18 Euwer: For the continuance.  
19  
20 Commissioner  
21 Gehrig: To Commissioner Euwer's continuance.  
22  
23 Vice Chair  
24 von Lubken: Commissioner Euwer?  
25  
26 Commissioner  
27 Euwer: Yes.  
28  
29 Vice Chair  
30 von Lubken: Commissioner Weathers?  
31  
32 Commissioner  
33 Weathers: No.  
34  
35 Vice Chair  
36 von Lubken: Commissioner Dow.  
37  
38 Commissioner  
39 Dow: Yes.  
40  
41 Vice Chair  
42 von Lubken: Chair votes no. We'll go ahead and have the hearing tonight.  
43  
44 Ms. Darzen: So I think to follow that up we're going to go ahead and ask then that the second option  
45 that's permitted, which is allowing the record to be held open for seven days. The usual  
46 seven, seven; we'll make that request.  
47  
48 Mr. Carey: You have a right to make that...  
49

1 Ms. Darzen: Right. I'll just put that on the record.  
2  
3 Mr. Robinson: Sorry. Mike Robinson again.  
4  
5 Vice Chair  
6 von Lubken: Yep.  
7  
8 Mr. Robinson: So you've decided not to continue the hearing to a date certain; which is your choice.  
9  
10 Vice Chair  
11 von Lubken: Yes.  
12  
13 Mr. Robinson: The appellant has now asked if written record, not the hearing, but the written record be  
14 continued. I think you have to grant that. It's not my business to tell you [inaudible  
15 00:28:36] you got to. So if you wanted to do three seven day periods it would be until ...  
16 Are you open until 5:00 PM all the time? Yes. So it could be until December 20th at 5:00PM  
17 for everyone to submit argument and evidence. Whoever's here, whoever hears about it,  
18 anybody puts in argument in evidence. There would be a second period until December  
19 28th at 5:00PM for anybody to rebut what came in during that first period. So I submit a  
20 letter. Someone says "Gee, I want to respond to Robinson." They can do that by the 28th.  
21  
22 But then the applicant only gets final written argument. We get the last word. No new  
23 evidence, just argument, and that period would be on January 4, 2018, at 5:00PM. So if  
24 you're inclined that's typically how it might be done. Three seven day periods, applicant  
25 gets the last word exclusively, and that would be January 4. And then you would come back  
26 to a meeting, not a public hearing, but a meeting because the record would close on  
27 January 4 and you will deliberate to a tentative decision. Thank you.  
28  
29 Ms. Darzen: So do we have a decision on that? The seven day period?  
30  
31 Vice Chair  
32 von Lubken: Do we need to vote on that?  
33  
34 Mr. Carey: No I think that basically, they usually make that motion right at the end of the-  
35  
36 Ms. Darzen: I'm just putting it on the record now.  
37  
38 Mr. Carey: Okay.  
39  
40 Ms. Darzen: Just to get it out of the way.  
41  
42 Mr. Carey: It's on the record.  
43  
44 Ms. Darzen: Okay. Thank you.  
45  
46 Mr. Carey: We won't leave without [crosstalk 00:30:02].  
47  
48 Ms. Darzen: I practice all over the state so all Planning Commissions have very different ways obligating.  
49

1 Mr. Carey: Well it's like I originally told you. You have a right by statute.  
2

3 Ms. Darzen: I understand that. Thank you. Okay. I'm going to go ahead with my argument and I think I'll  
4 just address something that staff brought up first, which was the issue of whether this is a  
5 ministerial versus a land use decision. So I think that is important in this situation because  
6 as staff pointed out the code is written to describe a permit extension as a ministerial  
7 decision. So this was a land use permit and then it was a two year permit with a fixed  
8 expiration. And after two years if you haven't completed your conditions of approval,  
9 started your construction, your permit expires unless you apply for an extension. So that  
10 extension decision, which is what we're here to discuss tonight is written into the code as a  
11 ministerial decision.  
12

13 However; under land use law in Oregon just because something says it's a ministerial  
14 decision in local law doesn't necessarily mean that it's not. So there's many cases where  
15 something that might not be normally a land use decision becomes one by virtue of the fact  
16 that it meets the criteria for one. And so we've cited that. Just to make sure, I think we've  
17 handed out our letter that we submitted on the eighth, which has a LUBA decision attached  
18 to it. It's pretty thick. So just referring to our section C which is the bottom of the second  
19 page and the top of the third page. So whether or not something is a land use decision is  
20 determined by whether it requires the exercise of legal or policy judgment.  
21

22 And that's under ORS 197-015. And so even if something under a code might be called a  
23 ministerial decision if evaluating the criteria for that is not a yes/no question, it requires  
24 some exercise of legal or policy judgment, it becomes a land use decision. And so here  
25 that's exactly what happened. And in other LUBA cases, other land use cases, something  
26 like a building permit or a lot line adjustment, which ordinarily might just be a check the  
27 box kind of thing, because of the nature of what needs to be evaluated what it involves,  
28 whether it brings in legal or policy judgment it gets converted to a land use decision that's  
29 appealable through the land use system.  
30

31 So this is one of those cases and that's because of a unique situation here, which is that  
32 there was a LUBA decision relating to this property that related to the exact criteria that's  
33 applicable to this particular ... the underlined permit here; the amphitheater decision. The  
34 LUBA decision related exactly to those criteria and so what staff had to do when they were  
35 evaluating whether to approve this extension was decide whether that LUBA decision  
36 changed the approval criteria. And that's what Mr. Robinson was getting at and I'll get back  
37 to that at a minute. But because Staff had to look at the LUBA decision, and evaluate that,  
38 and make some determination they were clearly using the exercise of legal or policy  
39 judgment by virtue of having to work through that process.  
40

41 So because of that it becomes a land use decision because they're trying to say well what  
42 does this actually mean? What does a LUBA decision mean? So that converts it to a land  
43 use decision. That's why having this Planning Commission hearing is appropriate and it gets  
44 appealed through the Planning Commission and Board process. So that's that issue. If  
45 anyone has any questions about that I'd be happy to answer it. No one's really raised  
46 timeliness although that was originally raised in Mr. Robinson's initial letter. This appeal  
47 was timely because the staff thought it was administrative they didn't send out public notice  
48 of this decision. So the appellant wasn't aware of it until September 29th.  
49

1 And then within the 15 day period for appealing land use decisions they filed the appeal. So  
2 the appeal was timely because this was a land use decision. So there shouldn't be any  
3 issues about that. So with those two issues aside I want to get to sort of the heart of the  
4 issue here. And it's really not so much about the underlying criteria, the substance of the  
5 permit, but it is about what does the LUBA decision mean and whether under the criteria  
6 for an extension, whether a LUBA decision changed the approval criteria for the original  
7 decision. And so I think the applicant's argument is a LUBA decision doesn't change the  
8 criteria because verbatim the exact criteria that's written nothing in state law, they haven't  
9 amended state law.  
10

11 So I think what Mr. Robinson says was there hasn't been a physical amendment to any of  
12 the law. So that's a really narrow reading of the criteria. So I think it's much narrower than  
13 the reality of what this criteria means. So when staff is evaluating whether this criteria is  
14 met ... So they look at did the approval criteria for the original decision found in a stake  
15 hold policy statute, administrative rule, comprehensive plan, did it change? Has it changed?  
16 So when you think about what criteria applies to a land use decision you've all probably  
17 looked at land use decisions a lot because you're on the Planning Commission. So you think  
18 about the staff brings in, "Okay. These are the things that apply when you're applying for  
19 this type of permit."  
20

21 So what the applicant is trying to say is "Well, there hasn't been any amendments to those  
22 codes. So therefore there hasn't been a change. So this is met." But it's really not that  
23 simple. So let me try to explain this in a way that's ... Think about if Hood River had said in  
24 the intervening period between when the original permit was approved and when they go  
25 for their extension, Hood River adds a provision to its code, the River County adds a  
26 provision to its code, that says amphitheatres are allowed but only up to 2,000 people. So  
27 that's a change to the code, right? And so that would mean that when they came in the  
28 approval criteria had changed, right, because before there was not limitation on the  
29 number of people that are allowed and now there is.  
30

31 So that would mean the approval criteria's changed. Right? So LUBA did exactly that. They  
32 said more things apply to this than applied before. So what LUBA said, and I've attached the  
33 LUBA decision from the other case, said "Actually state law does apply to this that you  
34 didn't believe applied." The county didn't think that these certain state laws applied and  
35 they do. And so that's a change in the criteria because LUBA has said you need to apply this  
36 when you're evaluating this type of permit. That's exactly the same as the county now  
37 saying the amphitheater is limited to 2,000 people because case law is law. And it's just as if  
38 the Supreme Court came down and said something, you wouldn't say "Well, the Supreme  
39 Court said this but we're going to ignore it."  
40

41 It's still binding and it's still something that implicates the way that the county applies its  
42 code, right? Or applies any time of law to a proposal. So the county can't ignore a LUBA  
43 decision. And so because of that LUBA said explicitly in its decision ... that I cited to it. That  
44 certain OARs and state wide planning goal 14 do apply directly to proposals on this  
45 property because of the nature of the exception that applies to this property. So it's the  
46 exact same exception that applies for the underlying decision here and LUBA found that the  
47 county should have applied and does need to apply OAR 660-004-001(8) sub two and three  
48 as well as state wide planning goal 14.  
49

1 So when LUBA made that determination, that's binding case law and it does change what  
2 the county needs to apply. It changes what criteria applies to this decision. So just as if the  
3 county had amended its own code. There's nothing distinct about that. So it's kind of an  
4 artificial line that the applicant is trying to draw there but the reality is that case law is just  
5 as binding as any other type of law. So I think I'll leave it there. I'm sure I've belabored this  
6 far longer than you wanted to here but if anyone has any questions feel free to ask.  
7

8 Commissioner

9 Euwer: Where is that in the LUBA?

10  
11 Ms. Darzen: So let's see.

12 Vice Chair

13 von Lubken: Jennifer, they have time to rebuttal. They have rebuttal time. We can ask questions too.

14  
15 Mr. Carey: During rebuttal.

16 Vice Chair

17 von Lubken: Do you have a rebuttal.

18  
19 Ms. Darzen: I'm just going to point out it's at page 20 and 21 and also page 10.

20  
21 Mrs. Staten: Chair von Lubken?

22 Vice Chair

23 von Lubken: Yes.

24  
25 Mrs. Staten: I have testimony [crosstalk 00:39:36]. I'll have things to pass out.

26 Vice Chair

27 von Lubken: Go ahead.

28  
29 Mrs. Staten: Chair von Lubken and Planning Commissioners, the first part of my written testimony  
30 addresses the timeliness issue. And I am prepared to testify under oath that I first learned  
31 about the extension on the county's e-Permitting website on September 29th. And that I  
32 immediately the same day contacted my attorney about it. And also contacted members of  
33 my board. And it was the first time that they also heard about the extension of this permit.  
34 And then we filed for the local appeal and our appeal to LUBA within the deadlines from  
35 our actual notice of the decision upon this extension.  
36

37  
38 The other thing I wanted to address was that the approval criteria have changed since the  
39 permits original 2014 decision based on LUBA's decision and I think that sort of the simplest  
40 way to think of it is, if the detour concert venue was applied for today, in the first instance,  
41 would Hood River County approve it using the M1 ministerial permit criteria that they used  
42 back in 2014 or would they use the additional new criteria that LUBA directed them to in  
43 the hotel opinion that occurred earlier this year. The county would have applied the new  
44 criteria identified by LUBA. And they would apply that new criteria to a new application on  
45 that property despite the fact that the county hasn't amended its code.  
46  
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1 They applied for this for the very first time today. There's no language in state law, the  
2 county code that have changed and yet the approval criteria are different based upon this  
3 LUBA opinion. And so we recommend that the Planning Commission deny the extension  
4 and support our appeal. The applicant is perfectly able to reapply for the same permit  
5 under the new approval criteria that LUBA has given about Goal 14 and Goal 4 but the  
6 extension should not be granted. And then the other thing that I just wanted to mention  
7 about the extension criteria that you have. Despite the fact that it says it's a ministerial  
8 decision, even within the language of the code there's some discretion in that it says that a  
9 two year extension may be granted by the Planning Director where all of the following  
10 standards are met.

11  
12 It doesn't say "shall be" it uses the word "may", which is a discretionary term. And the  
13 county also uses that term in a discretionary way in that the first extension wasn't a two  
14 year extension. It was a one year extension. This clearly calls for a two year extension. So I  
15 think that the county Planning Director felt that they had the discretion within this to  
16 modify the language here in this particular application and grant only a one year rather  
17 than a two year extension. So this area is a place where there's discretion and not just clear  
18 and objective criteria. Thanks.

19  
20 Vice Chair

21 von Lubken: Is there anymore testimony for the appellant? Rebuttal?

22  
23 Mr. Robinson: Yes.

24 [00:44:04]

25 Mrs. New: Sorry. Bonnie New, 405 Stonegate Drive here in Hood River. I'm just a citizen of the county  
26 but when I read about this issue and the appeal it kind of piqued my interest because of its  
27 potential implications for the county and thus for just regular folks like myself down the  
28 line. My simple understanding, and I just mention that because this is kind of what I'm  
29 thinking from, but my simple understanding is the criteria that can be used to approve the  
30 concert venue and the hotel were the same. But LUBA ruled that the use of these criteria  
31 was in error. And then a few days later the county gave an extension to the concert venue  
32 project based on the same criteria.

33  
34 Okay. Others here have gone into the fine points of the rules, and the appeals, and the  
35 dates, and this and that, and all the technical stuff. And I don't really have anything to add  
36 to that subject but I'm kind of concerned about the optics here and how it could negatively  
37 affect our permit. And so the optics. The concert thing was found by the county to be  
38 permissible for this rural site. Okay. Then LUBA determines the criteria and the permitting  
39 were in error and the county goes ahead and gives a permit related extension anyway.  
40 Okay. To just regular folks like me this could feel and look a little tricky to people. So County  
41 Commissioners and the County Planning Department deal with so often with issues where  
42 there's controversy.

43  
44 Short term rentals, zoning, fees, as well as administering land use type of questions. So it's  
45 really important for the people in the county to have faith in your decisions and in your  
46 processes. They need to, they meaning me, all of us need to see your functioning as  
47 transparent, and governed by proper process, and responsive to new data, and especially  
48 to indications that mistakes may have been made in the process. So the comment that I am  
49 making to you is that backtracking and resending the concert venues extension and it might



1 be really important to managing the optics here and to maintaining county residence faith  
2 and confidence in your work. Thank you.

3  
4 Vice Chair

5 von Lubken: Anyone else?

6  
7 Mrs. Wood: I sent my comment in. I'm happy to read it.

8  
9 Vice Chair

10 von Lubken: Be my guest Polly, if you'd like to.

11  
12 Mrs. Wood: Okay. Thank you for taking the time tonight. Polly Wood. 525 Highline Road, Hood River  
13 Oregon. And I support the appeal 17-272 of the permit extension of the permit extension  
14 for Dee Tour concert venue. On June 29th of this year Oregon Land Use Board of Appeal  
15 sadly rejected the Hood River County's approval of the 50 room hotel at the rural old Dee  
16 Mill site. The criteria for approval has changed from what the county applied 2014 as LUBA  
17 found exception taken in 1984 was for rural industrial use not the busy urban style use like  
18 the proposed concert venue and 50 room hotel should be built off the county road at a  
19 bottleneck river crossing.

20  
21 LUBA gave the county instructions to provide some key new criteria. Number one the  
22 developer would need a new reasons exception to goal four, forest lands, entered to allow  
23 commercial uses. And number two, the goal 14 exception organization showing why it was  
24 necessary to locate an urban use in rural areas. And that no suitably zoned plan was  
25 available in the county to build the hotel. You think that you're [inaudible 00:48:38] applied  
26 to the very controversial concert project. I urge you to support the appeal of this extension.  
27 Thank you for your consideration.

28  
29 Vice Chair

30 von Lubken: Anyone else? Rebuttal?

31  
32 Mr. Robinson: Okay Chair von Lubken, Michael Robinson again on behalf of the applicant. So before I  
33 finish tonight I'd like to reread the three week period, and you should of course decide if  
34 that's what you want to grab. So let me just go to the heart of this and that is, again,  
35 114084. Let me read you the language. "The approval criteria for the original decision  
36 found in the state goal, policy statute, or administrative rule, county conference plan, or  
37 this-ordinance have not changed." Go back to the first part of that. "The approval criteria  
38 for the original decision" Everyone acknowledges that the county did not apply state goals,  
39 administrative rules, policies or statutes to the 2014 decision.

40  
41 That is not what the county decision relied upon to approve the amphitheater decision. So  
42 to apply this in a way the appellant wants you to apply it, you have to ignore that. It very  
43 clearly says what we're required to show is that the criteria that were applied haven't  
44 changed. There's no dispute that the criteria that LUBA applied to the hotel decision, which  
45 occurred almost three years after the county approved the amphitheater decision, there's  
46 no dispute that the amphitheater decision didn't apply to state law. So all the state law,  
47 and even assuming everything else that they've said is accurate, and it's not, even assume  
48 that were the case, none of the state law was in the words of your code "approval criteria  
49 for the original decision".

1  
2 It doesn't apply to this matter. And we're not here to re-litigate or re-argue the 2014  
3 decision. The one thing I do agree with them on is, this is a very narrow issue. Did those  
4 original approval criteria that would apply change? You can find they did not for two  
5 reasons. The criteria that the appellants are most concerned about, state law, were not  
6 applied to the 2014 decision but even if they had been they have not changed. All LUBA did  
7 was read these things in a different, and frankly unexpected, way but that does not  
8 constitute a change. And to find otherwise is inconsistent with the plain language of your  
9 code. That's why the appellants are wrong.

10  
11 You don't even have to get to my argument that 1.14084 doesn't include court or LUBA  
12 decisions. And it doesn't. You can address their issue and reject it by acknowledging what  
13 the county applied. It applied county law. That hasn't changed. It did not applying state law  
14 but even if it had that hasn't changed. So either way the appellants don't prevail in that  
15 argument. Let me just also mention one other thing. The statement read talked about  
16 discretion in the form of the Director granting one year rather than two years. I think that's,  
17 I apologize I'm not trying to be difficult, I think though that is a misreading of the plain  
18 language of the code.

19  
20 The way 1.1408A is read properly is, it says "A two year extension may be granted by the  
21 Planning Director where all the following standards are met." So that's the first extension.  
22 And then it goes on after the four criteria to say "Additional one year extension." The issue  
23 before you tonight is the second or additional extension. And by code, by your code, it's  
24 only one year. There's no discretion involved here. The first extension is two years.  
25 Subsequent extensions are two years. That doesn't make this discretionary. There may be  
26 other reasons that it might be discretionary but you'll decide that issue. The county staff  
27 has told me they believe it's ministerial.

28  
29 But the argument that Mrs. Staten made misreads the county code. I don't think I have  
30 anything else since we'll be able to submit argument to you in writing. I think that'll be  
31 helpful. We'll respond to all emails that Mr. Walker distributed to you in our written  
32 argument. So Chair von Lubken if you'd like I'll just repeat the three dates. Seven days from  
33 today, which is, December 20th, 2017 at 5:00PM for anyone to submit argument in  
34 evidence. And I assume that should go to Mr. Walker. And he'll accept it via fax, or email, or  
35 personal delivery. There's no prohibition on how it's submitted.

36  
37 Mr. Roberts: Okay.

38  
39 Mr. Robinson: The second period would be ... think I got my dates wrong. I did. So the second period  
40 would be December 27th for anyone to rebut those first period submittals. So seven days  
41 until the 20th. A second seven day period until the 27th. And then that final period for  
42 applicant only to submit written argument only without new evidence would be January 3,  
43 2018. So that's the open record period we would ask you to adopt and then you would  
44 come back of course in a subsequent meeting, not a public hearing, and you're not taking  
45 additional evidence and then deliberate to a tentative decision. So thanks for letting me  
46 talk probably too long tonight. Are there any questions you have before we finish our  
47 personal interaction?

48  
49 Vice Chair

1 von Lubken: We'll get to that ...

2

3 Mr. Robinson: Okay. Thank you for your time tonight.

4

5 Vice Chair

6 von Lubken: Yep.

7

8 Vice Chair

9 von Lubken: Is there any ... Do you want to say something?

10

11 Ms. Darzen: Sure. I'll just be very quick. We're belaboring a very minor point here but it is the question  
12 here. So thank you. Mariel Darzan, again, for the appellant. So I think just to take Mr.  
13 Robinson's interpretation to its logical conclusion. He's giving such a narrow reading of this  
14 that he's trying to corner you into saying that let's say for example the legislature in the  
15 intervening years had said "Amphitheaters can only go up to 2,000 people on industrial  
16 lands, right? And so that's a new criteria that applies. And the situation that didn't apply at  
17 the time that the first permit was ... But by his reading because that criteria didn't exist it  
18 doesn't matter for the purposes of the extension.

19

20 That's not a plausible reading of what this criteria is. If state law changes, if they add a  
21 criteria, that's changed the criteria that applies in this situation because the state  
22 legislature has said "Well, if you're evaluating an amphitheater on industrial lands it can  
23 only be up to 2,000 people, right? And so I think it's pretty clear that his reading is way too  
24 narrow of what the intent is here because otherwise why do you even have this criteria?  
25 The criteria is to say let's look and make sure that there's no major change in the  
26 overarching law here that we should be looking at instead of just rubber stamping this  
27 permit extension.

28

29 It would be limited to "Well, the county applied only county code here. It didn't look at  
30 state law or state land use goals. So we don't even have to look at any changes that might  
31 have happened to those." Right? And so that's just too narrow of a reading. That doesn't  
32 make any sense for why the county would put that in its code. It's an implausible  
33 interpretation of what that would mean. And I think just getting back to the LUBA decision,  
34 again, the idea that you could ignore binding case law when considering whether the law  
35 has changed. That's also an implausible interpretation. Case law is binding. It's the same as  
36 regular law.

37

38 It's been found to be that way in federal cases, in state cases, and we'll be happy to cite  
39 some of those in our open record testimony during the next period. So thank you very  
40 much for listening tonight and I appreciate your attention to the minutia here and we  
41 would ask that you agree with our appeal and deny the permit extension. Thanks.

42

43 Vice Chair

44 von Lubken: Any public agencies?

45

46 Mr. Walker: No.

47

48 Vice Chair

1 von Lubken: Questions from the board of the parties? Commissioner Gehrig? Do you have any  
2 questions?  
3  
4 Commissioner  
5 Gehrig: Not at this time. No.  
6  
7 Vice Chair  
8 von Lubken: Commissioner Euwer?  
9  
10 Commissioner  
11 Euwer: I do have a question of Mr. Robinson. So in our packet ... Did you submit all of the  
12 ordinances, and amendments, and state law information in exhibit B? Or is that from-  
13  
14 Mr. Robinson: So if you're -  
15  
16 Commissioner  
17 Euwer: From you. So there's I think 37 pages. There's a total of about 80 pages in here that is all  
18 county statutes that don't apply and state information that doesn't apply. So in those 80  
19 pages, is there something to prove that nothing applies or is there something in those 80  
20 pages that applies?  
21  
22 Mr. Robinson: So Commissioner Euwer, we put all of that in to show you that nothing changed that was  
23 relevant to the criteria that were applied to the decision but we also went beyond that and  
24 tried to demonstrate that even if the issues that LUBA addressed in the hotel decision were  
25 relevant, they're not, but even if they were none of those things changed. That's what all of  
26 those pages demonstrate. We were trying to build an evidentiary record for this  
27 commission to rely upon, including that the approval criteria used by the county in the  
28 2014 decision have not changed since then.  
29  
30 Commissioner  
31 Euwer: Okay. Thank you.  
32  
33 Mr. Robinson: You're welcome.  
34  
35 Vice Chair  
36 von Lubken: Anything else?  
37  
38 Commissioner  
39 Euwer: No. Thank you.  
40  
41 Vice Chair  
42 von Lubken: Commissioner Dow.  
43  
44 Commissioner  
45 Dow: In keeping that my normal approach of really wanting to understand better what's going on  
46 out there not just [inaudible 00:59:05]. I'm curious as to why a second extension was  
47 necessary. There was just a one liner of "Everything's taking longer than expected." So I'm  
48 curious what's been done so far on the project or in meeting the various requirements of  
49 the county.

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Mr. Robinson: So Commissioner Dow I'm going to let the applicant respond to that. So Bob.

Mr. Benton: Yeah. That's a good question.

Vice Chair

Von Lubken: State your name please.

Mr. Benton: Bob Benton. 1575 Nunamaker Road, Hood River, Oregon. So when we started this process, I'd like to say first, that my two business partners and I are not developers. We had no experience with this type of development before and when the approval came 55 conditions and to be honest I can't cite all of the different things that were requested. I can say that we worked on several of them. We separated the responsibilities between the three of us and have tried to tackle those different responsibilities. One of the ones I was in charge of was getting ODOT rail permit, which is actually a county permit. I think the county has to apply because of the railroad there.

That process took over a year just to go through that one particular process. Just waiting on state agency responses, trying to understand what they wanted. By the time you apply to these state agencies, it's open ended. You don't hear back for 100 to 200 days. We were there probably calling every day putting pressure on them. Maybe that would have helped. The three of us all have full time jobs and we're trying to do this as another business partnership. So I think to be honest we're working at it as hard as we can but it's difficult not having the knowledge base and as much time as necessary so it's taking longer than we wanted. Yeah.

I can give other examples but it's basically when you have that many conditions we're trying to complete the conditions as quickly as we can given the time we have available. And I mean we'd like to get this thing up and running as soon as possible, as soon as we can. We hired a couple people to help us but with appeals and whatnot, anything it throws it into question, we're hesitant to continue. To push forward and spend more money with uncertainty flowing out there. So at this point I would like to say I was going to go home and write a check to X agency to continue to go down that road to meet the communal requirements but as soon as we got wind of this appeal what are we supposed to do?

Keep writing checks or wait until we get a decision back? So there's been more than one appeal through this process. We didn't even understand we were going to get the first amphitheater for the first several months after the September date. Anyway so this is kind of a long rambling answer but whether its state agency response time, our struggles to come up with the time order, it's a difficult process for us, as well as the uncertainties around land use.

Commissioner

Gehrig: Do you think ... how much of the 50 conditions and all of the permits that need to be done what percentage of them have you-

Mr. Benton: So we continually ... Eric will probably better answer that but I think we've got a few left of the conditions. Some of them are optional. Some of them have varying levels. They're multi

1 stepped but I think based on what it would take to get construction, we're very close. I  
2 think you have better information Eric.

3  
4 Mr. Walker: Well I think there's three types of conditions that are part of the final decision. Or three  
5 types of conditions. Things that needed to be done before they can start construction,  
6 things that needed to be done before they can start operating, and then things that were  
7 done while you're operating, these things that applied to that. So essentially the ones that  
8 require them to be completed prior to construction, I think that they are almost done with  
9 all of those. It's been a while since I've looked at the application and their file but I'm pretty  
10 sure that they're almost done with all of those. And in fact I think they submitted an  
11 application for the stage itself and we were kind of waiting on these final conditions to be  
12 met before we issue that permit. And then with this appeal that kind of puts things on hold.

13  
14 Mr. Benton: Yeah. That's a good point. So one issue is we applied for the building permit for the stage.  
15 And the county was ready to issue it and we've told them not to issue it because once they  
16 issue it, it comes with its own timetable that we have to construct the stage by. However,  
17 this process has its own timetable too. So if we do get that permit to construct the stage  
18 and then depending on where this process goes we hope we prevail but that's a lot of  
19 money to spend on something and then have the process go the way you don't want. And  
20 then all of a sudden we built this stage and we can't use it. So that's back to your point  
21 about we keep starting and then we hesitate a little bit because of the uncertainty that  
22 comes with this Oregon land use system.

23  
24 Commissioner

25 Dow: Well my follow up question was going to be, so how many more extensions do you think  
26 you'll need? This would be the second but you don't have an answer because you're saying  
27 that the world is uncertain and things take long.

28  
29 Mr. Benton: We're ready to build the stage. I mean like I said we're holding back on the county's  
30 approval because until we get this issue resolved-

31  
32 Commissioner

33 Dow: For the stage.

34  
35 Mr. Benton: Yeah, the stage. Yeah. And once the stage is constructed-

36  
37 Commissioner

38 Dow: You're ready to go.

39  
40 Mr. Benton: We'll be vested in the project at that point. I don't think there will be much more.

41  
42 Commissioner

43 Gehrig: I know this appeal is unanticipated for your organization. If you had anticipated that there  
44 might be an appeal to your extension would you have pulled a permit and started building  
45 the stage.

46  
47 Mr. Robinson: No. I'm sorry I don't know if I'm comfortable with him answering that. And I apologize. It  
48 just doesn't relate to the criteria. I don't want him to speculate about what he would have  
49 done on something that's really speculative. So my apologies. (silence)

1  
2 Commissioner  
3 Dow: I think that's all I have.  
4  
5 Vice Chair  
6 von Lubken: Commissioner Weathers?  
7  
8 Commissioner  
9 Weathers: Can I ask a question of council?  
10  
11 Mr. Carey: Sure.  
12  
13 Commissioner  
14 Weathers: I'm assuming the smile is a yes. Being that this is not my first public hearing I'm not  
15 completely shocked as to the definition of approval criteria, and/or the definition of zoning  
16 ordinance, or Oregon law. Could I ask your opinion of the interpretation of change? Change  
17 being the operative word right now in the zoning ordinance. That no applicable criteria has  
18 changed.  
19  
20 Mr. Carey: Well I think the county staff has taken the position that there was no change. And operated  
21 on that position.  
22  
23 Commissioner  
24 Weathers: And I would assume that the county staff leaned on council for interpretation.  
25  
26 Mr. Carey: Well we did. Yes. We did discuss it.  
27  
28 Commissioner  
29 Weathers: Thank you.  
30  
31 Mr. Carey: I don't want to be interjecting into the decision but-  
32  
33 Commissioner  
34 Weathers: No. Absolutely. No. No. No. No. No. It's just-  
35  
36 Mr. Carey: The staff took the position that they follow those four criteria to make this decision and  
37 that was an administrative decision.  
38  
39 Commissioner  
40 Weathers: I understand that. I just wanted to hear that as well because like they say it's-  
41  
42 Cell Phone: Need a quick recharge? You came to the right place. Master trainer Tracy-(Personal phone  
43 message going off in audience.)  
44  
45 Owner of  
46 Cell Phone: Sorry.  
47  
48 Commissioner  
49 Weathers: Okay. Thank you.

1  
2 Vice Chair  
3 von Lubken: John do you have any more questions?  
4  
5 Commissioner  
6 Gehrig: I'm through, thank you.  
7  
8 Vice Chair  
9 von Lubken: Heather was there a reason why you didn't appeal this back in 2014? Appeal the whole  
10 venue to LUBA?  
11  
12 Ms. Darzen: I think I'm also going to interject there and say that, that's also not-  
13  
14 Vice Chair  
15 von Lubken: I'm just asking a question.  
16  
17 Ms. Darzen: Yeah. I'm going to say don't answer that.  
18  
19 Vice Chair  
20 von Lubken: Okay. Fair enough.  
21  
22 Commissioner  
23 Weathers: Can I ask another question?  
24  
25 Vice Chair  
26 von Lubken: Yeah.  
27  
28 Commissioner  
29 Weathers: Reading the appeal while it's inferred I don't see in the appeal that it's asking anything  
30 about the validity, the conditional land use permit. It's questioning the ministerial decision  
31 of an extension of that conditional land use permit?  
32  
33 Vice Chair  
34 von Lubken: Yes.  
35  
36 Ms. Darzen: Correct.  
37  
38 Vice Chair  
39 von Lubken: Oh. Sorry.  
40  
41 Ms. Darzen: Yeah. That's correct.  
42  
43 Commissioner  
44 Weathers: Okay. I'll stop there.  
45  
46 Vice Chair  
47 von Lubken: So to go on with that, so you're insinuating that the Planning Director does not have the  
48 capacity to grab that without having a hearing. Is that what you're-  
49



1 Ms. Darzen: Correct. In this particular case, well not having a hearing but they could have noticed it as a  
2 land use decision. So the extension process because it involved an exercise of legal or policy  
3 judgment that bumps it into a land use decision, which requires notice.  
4  
5 Vice Chair  
6 von Lubken: And John have you ever had to do that before?  
7  
8 Mr. Roberts: With an extension, no.  
9  
10 Vice Chair  
11 von Lubken: So this is your first time that we've had to-  
12  
13 Mr. Carey: Pretty clear in the ordinance.  
14  
15 Ms. Darzen: As I mentioned, there's LUBA decisions frequently that-  
16  
17 Vice Chair  
18 von Lubken: Well we're talking about Hood River County and we're talking about this right now. And  
19 that's why he's asking the question. If our planning director had ever had to do that before-  
20  
21 Ms. Darzen: Sure.  
22  
23 Vice Chair  
24 von Lubken: Okay. Anymore questions? [inaudible 01:09:53]  
25  
26 Commissioner  
27 Euwer: Are we going to have a chance to ask questions after?  
28  
29 Vice Chair  
30 von Lubken: We are going to close the hearing and deliberate.  
31  
32 Commissioner  
33 Gehrig: No [crosstalk 01:10:00].  
34  
35 Commissioner  
36 Weathers: We're continuing. Yeah.  
37  
38 Vice Chair  
39 von Lubken: and deliberating?  
40  
41 Mr. Carey: We have to remember those dates. December 20th.  
42  
43 Vice Chair  
44 von Lubken: 20th, 27th, and the 3rd.  
45  
46 Commissioner  
47 Gehrig: So we deliberate after we get past -[crosstalk 01:10:15]  
48  
49 Mr. Carey: We have to reconvene after the 3rd and then we'll deliberate.

1  
2 Vice Chair  
3 von Lubken: Okay. So what do I need to-  
4  
5 Mr. Carey: Well just basically adjourn because-  
6  
7 Vice Chair  
8 von Lubken: Okay.  
9  
10 Mr. Robinson: Well don't they need to adopt the open record period Mr. Carey?  
11  
12 Mr. Carey: Oh yeah, I'm sorry. We kind of talked of that.  
13  
14 Vice Chair  
15 von Lubken: So do we get a motion and a vote on that?  
16  
17 Commissioner  
18 Weathers: As the Planning Director, John, did you double check those dates-  
19  
20 Mr. Roberts: I did. Yes.  
21  
22 Commissioner  
23 Weathers: And those-  
24  
25 Mr. Roberts: Yeah. December 20th, December 27th, and January 10<sup>th</sup>.  
26  
27 Commissioner  
28 Weathers: So I would make a motion that we adopt those dates as listed. As December 20th, bringing  
29 new evidence by 5:00PM December 27th, for 5:00PM for rebuttal, and the last word being  
30 January the 4th.  
31  
32 Mr. Roberts: Third.  
33  
34 Commissioner  
35 Euwer: Three days. I thought he said 28th.  
36  
37 Mr. Roberts: 27th. [crosstalk 01:11:13]  
38  
39 Commissioner  
40 Euwer: 27th and January 3rd.  
41  
42 Commissioner  
43 Gehrig: Okay. I second that.  
44  
45 Vice Chair  
46 von Lubken: Okay. That's moved and seconded. Commissioner Gehrig?  
47  
48 Commissioner  
49 Gehrig: Yes.

1  
2 Mr. Roberts: Sorry. Did you say then the next Planning Commission meeting January 10th?  
3  
4 Commissioner  
5 Dow: Yeah. Do we have to set a date or certain time?  
6  
7 Mr. Carey: Yeah. It'll be wise to set the date.  
8  
9 Commissioner  
10 Dow: We have a Planning Commission meeting on January 10th.  
11  
12 Commissioner  
13 Weathers: Oh. We already have one on the 10th. We have an appeal.  
14  
15 Mr. Roberts: Our recommendation is to continue it to the 10th.  
16  
17 Vice Chair  
18 von Lubken: Yeah. Continue it to the 10th. Are you good with that motion?  
19  
20 Commissioner  
21 Weathers: Yeah. I would make the motion as amended.  
22  
23 Vice Chair  
24 von Lubken: Okay. Okay.  
25  
26 Commissioner  
27 Gehrig: Yes.  
28  
29 Vice Chair  
30 von Lubken: Yes to?  
31  
32 Commissioner  
33 Gehrig: Well she already seconded it. So.  
34  
35 Vice Chair  
36 von Lubken: Okay. Commissioner Euwer?  
37  
38 Commissioner  
39 Euwer: Yes.  
40  
41 Vice Chair  
42 von Lubken: Commissioner Dow?  
43  
44 Commissioner  
45 Dow: Yes.  
46  
47 Vice Chair  
48 von Lubken: Commissioner Weathers?  
49

1 Commissioner  
2 Weathers: Aye.  
3  
4 Vice Chair  
5 von Lubken: What?  
6  
7 Commissioner  
8 Weathers: Aye. Yes.  
9  
10 Vice Chair  
11 von Lubken: Chair votes yes. So this will be continued until the 10th of January with the dates certain of  
12 the 20th of December, 27th of December, and the 3rd of January. We are adjourned.  
13  
14