

**The Following Written Testimony was Received During the  
Final 7-day Continuance Period Between  
January 23 and 29, 2020.**

**January 31, 2020**



January 28, 2020

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VIA E-MAIL

Mr. Bob Schuppe, Chair  
Hood River County Planning Commission  
Hood River County Business Administration Building  
601 State Street  
Hood River, OR 97031

RE: Appeal #19-0243 of Commercial Land Use Permit #13-0216; Applicant's Final  
Written Argument

Dear Chair Schuppe and Members of the Hood River County Planning Commission:

This office represents Apollo Land Holdings, LLC ("Apollo"), the Applicant for the fourth one-year extension (the "Extension") of the commercial land use permit approved in 2014 (the "2014 Permit").

**1. Introduction.**

This letter is the Applicant's final written argument submitted after the close of the record to all other persons pursuant to ORS 197.763(6)(e). This letter contains no new evidence.

**2. Response to second open record period letters.**

**A. January 22, 2020 letter from Ms. Heather Staten representing Thrive Hood River.**

Ms. Staten argues that the Planning Commission should read Hood River County Zoning Ordinance ("HRCZO") 1.130.A.4 contrary to its plain and express language. This approval criterion provides:

**"The approval criteria for the original decision found in a state goal, policy, statute or administrative rule, the Comprehensive Plan or this Ordinance have not changed; . . ."**

The plain meaning of this express language is that a policy consideration applies only to a state policy, not to a County policy. Had the Hood River Board of County Commissioners (the "Board") wished to provide that County policies were relevant, the Board would have instead enacted a criterion that said "in a state or County policy. . ." Further, the plain language of the criterion provides that the first four elements (goal, policy, statute or administrative rule) are all matters of state concern. The County does not have a state goal, a

state policy nor does it enact statutes or administrative rules. On the other hand, the Comprehensive Plan and the Hood River County Zoning Ordinance are exclusively County matters. Thus, the Planning Commission should find that the plain language of HRCZO 1.130.A.4 separates state matters from County matters and the Board did not enact an ordinance concerning County policy.

Ms. Staten's tutorial on grammar does not change the plain meaning of the language. Her suggested language at the top of Page 2 of her letter changes the context and meaning of the criterion in a way that is contrary to its plain language.

The Planning Commission should reject her arguments.

**B. January 22, 2020 memorandum from Mary Ellen Barilotti.**

Ms. Barilotti's memorandum repeats many of the arguments that she has made previously and contains no relevant approval standards for the Extension.

The Planning Commission should reject her arguments.

**3. Conclusion.**

The Applicant respectfully requests for the following reasons that the Planning Commission reject the appeal, affirm the Planning Director's decision and approve the Extension because:

- Only the Extension, not the 2014 Permit, is before the Planning Commission in this matter;
- The Extension approval criteria are exclusively found in HRCZO 1.130.A.1-4;
- No other criteria or factors may be applied to the Extension under ORS 215.416(8)(a). *Ashley Manor Care Centers, LLC v. City of Grants Pass*, 38 Or LUBA 308 (2000) expressly addressed the precise argument made by Appellant and opponents that the use of the word "may" in a zoning ordinance gave the local government the discretion to apply additional standards. LUBA rejected this argument. *Ashley Manor* is a binding decision that answers the question regarding additional discretion;
- OAR 660-004-0018 is inapplicable to the Extension;
- "County" policy is inapplicable to the Extension because Ms. Staten's argument is inconsistent with the plain language of HRCZO 1.130.A.4 and a contrary interpretation would not be entitled to deference by LUBA under ORS 197.829(1) because the interpretation is inconsistent with the plain language and is not plausible under *Siporen v. City of Medford*, 349 Or 247, 243, P3d 777 (2010).

Mr. Bob Schuppe, Chair  
January 28, 2020  
Page 3

- The record contains substantial evidence demonstrating that HRCZO 1.130.A.1-4 are satisfied.

For all of the reasons contained in this letter, the Applicant's prior written and oral testimony, the Planning Commission should affirm the Planning Director's approval of the Extension, reject the appeal and approve the Extension.

Very truly yours,



Michael C. Robinson

MCR:jmhi

Cc: Mr. Eric Walker *(via email)*  
Mr. Keith Cleveland *(via email)*  
Mr. Bob Benton *(via email)*  
Mr. Derek DeBorde *(via email)*  
Mr. Jason Taylor *(via email)*  
Ms. Heather Staten *(via email)*

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