



Hood River County Community Development

Planning, Building Codes, Code Compliance, Economic Development & GIS


601 State Street, Hood River OR 97031

Eric WALKER, DIRECTOR

(541) 387-6840 • plan.dept@co.hood-river.or.us

September 9, 2020

To: Derek DeBorde, Apollo Land Holdings, LLC, Applicant and Property Owner (*via email*)
Michael Robinson, Attorney for the Applicant (*via email*)
Heather Staten, Thrive Hood River, Appellant (*via email*)
Andrew Mulkey, Attorney for the Appellant (*via email*)
Subscription Holders (*via email*)
Adjacent Property Owners

From: Eric Walker, Community Development Director 

RE: Appeal #20-0165 of Permit Extension Related to Commercial Land Use Permit #13-0216

Request: The Hood River County Planning Commission will consider an appeal filed by Thrive Hood River of the County Planning Department's decision to grant a fifth 1-year extension of an approved commercial land use permit (*File #13-0216*) issued in 2014 for the construction and operation of an amphitheater for outdoor concerts and other commercial events.

Please note: This latest extension is the result of delays associated with processing a similar appeal of the fourth extension of the above referenced permit, which is still unresolved and currently being reviewed by the Oregon Land Use Board of Appeals (LUBA).

Location: The property involved in this application is located at the former Dee mill site, which is situated along the south side of Lost Lake Road, approximately 500 feet southwest of its intersection with Dee Highway; 1N 10E 07 #201.

Applicable Planning Criteria: This appeal will be reviewed pursuant to applicable provisions of Article 1, Section 1.140 (*Extensions, Enforcement/Revocation*) and Section 1.170 (*Definitions*), and Article 72 (*Planning Directors Review Procedures*) of the Hood River County Zoning Ordinance.

Response: Comments regarding this appeal must be received by the County Planning Department by **Wednesday, September 30, 2020 at 5:00 p.m.** to be included with the staff report to the Planning Commission. However, written or oral comments may be provided at the hearing itself. (*At least 12 copies should be provided for written comments submitted the night of the hearing. Also, the amount of time given for oral testimony will be limited so written comments in advance of the hearing are encouraged.*)

Hearing Date: The Planning Commission hearing is scheduled for **Wednesday, October 14, 2020 at 5:30 p.m.** in the Hood River Armory located at 1590 12th Street, Hood River, Oregon.

Please note: State of Oregon COVID-19 guidelines concerning crowd size, social distancing, and face coverings will be followed.

Hearing's Procedure: Failure of an issue to be raised at the hearing, in person, or by letter, or failure to provide statements or evidence sufficient to afford the decision makers an opportunity to respond to the issue precludes appeal to the County Board of Commissioners based on that issue.

Available Information: If you have questions or would like additional information regarding this appeal, please contact Eric Walker, Community Development Director, at the Hood River County Planning Department at (541) 387-6840 or eric.walker@co.hood-river.or.us. The application, all documents, and evidence are available for review at no cost and copies can be provided at \$0.25 per page. A copy of the staff report will be available for inspection or purchase at least seven days prior to the hearing.

NOTICE TO MORTGAGEE, LIEN HOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED.

Appeal Fee: \$250

COUNTY OF HOOD RIVER
601 STATE STREET
STATE OF OREGON
PETITION FOR APPEAL OF THE
PLANNING DIRECTOR'S DECISION)

) Thrive Hood River
)
) 415-20-000165-PLNG
Application Name and File Number

Pursuant to Article 72, Planning Directors Review Procedures, Section 72.40 - Appeal from Decision of the Director and Section 72.45 - Standing, of the Hood River County Zoning Ordinance, an action or ruling of the Planning Director authorized by this ordinance may be appealed to the Planning Commission within 15 days after the Director has rendered a decision, if those making an appeal have "standing". If no appeal is taken within the 15 day period, the decision of the Director shall be final. Contact the Planning Department for the filing fee.

Notice of the Planning Commission's public hearing shall be by one publication in a newspaper of general circulation in the County, not less than ten (10) days prior to the date of the hearing.

Pursuant to Article 72, those making an appeal must have "standing" as prescribed in Section 72.45; see Appendix "A". Based upon consideration of provisions in Section 72.45, it is felt that I (we) have standing based upon the following justification:

SEE ATTACHED

Consequently, I (we), the undersigned, hereby appeal the decision of the Hood River County Planning Director in the application of: (file number and type of application)
Fifth Extension of Commercial Land Use Permit #13-0216
for: IN 10E 7, TAX LOT 201
Apollo Land Holdings, applicant

considered before the Planning Director on (date): July 24, 2020
for the following reasons: SEE ATTACHED

I (we) therefore petition the Planning Commission to hold a public hearing to consider this appeal of the Planning Director action on the above matter.

Dated this 3rd day of AUGUST 2020.

Signature Heather Staten
Name (Please print) HEATHER STATEN, THRIVE HOOD RIVER
Address: P.O. Box 1544
HOOD RIVER, OR 97031
Phone Number: (541) 440-5225
heather@thrivehoodriver.org

Appeal of Planning Director's Decision dated July 24, 2020
Extension of Commercial Land Use Permit #13-0216;
1N 10E 7, Tax Lot #201
Applicant: Apollo Land Holdings, LLC

Standing:

Thrive Hood River has standing to appeal this decision under Section 72.45 (B)(3) because it is a civic organization that has a valid interest in the preservation of aesthetic, healthful and conservation conditions for the welfare of the general public. For 40 years, Thrive Hood River (formerly Hood River Valley Residents Committee) has had a mission to protect Hood River Valley farms, forestlands, watersheds and the livability of its urban and rural communities through advocacy, education and monitoring land use processes and decisions. Thrive Hood River additionally has standing under Section 72.45 (B)(2) as an aggrieved and as an adversely affected party.

Thrive Hood River has standing to appeal this decision under ORS 215.416(11)(a) per Oregon's Land Use Board of Appeal's decision in *Hood River Valley Residents Committee vs. Hood River County* (LUBA No. 2018-28).

Reasons for Appeal:

1. Despite being defined in the Hood River Zoning Code as a ministerial decision, the extension criteria allow for the exercise of discretion in granting an extension. Decisions which require the use of interpretation or the exercise of policy or legal judgment are land use decisions under state law. The avenue for contesting land use decisions is an appeal to the Hood River County Planning Commission.
2. The applicant has sat on their hands too long and failed to make progress in constructing the project.
3. The decision is inconsistent with HRCZO 1,130.A.4 because the approval criteria found in county policy has changed since the projects initial approval.
4. The decision is inconsistent with HRCZO 1,130.A.4 because the approval criteria found in county ordinance has changed since the projects initial approval.

Many of our appeal reasons are the same as in our appeal #20-0078 of the Fourth Permit Extension for this project. We will be appealing the Board of Commissioner's July 15, 2020 decision to uphold the permit extension to Oregon's Land Use Board of Appeals.



Hood River County Community Development

Planning, Building Codes, Code Compliance, Economic Development & GIS

601 State Street, Hood River, OR 97031

ERIC WALKER, DIRECTOR
(541) 387-6840 • plan.dept@co.hood-river.or.us

July 24, 2020

Apollo Land Holdings, LLC
c/o Derek DeBorde
3961 Barrett Drive
Hood River, OR 97031

FILE COPY

RE: Extension of Commercial Land Use Permit #13-0216; 1N 10E 7, Tax Lot 201

Dear Mr. DeBorde:

Your request for a fifth extension of time for the above-mentioned permit has been reviewed by the Hood River County Planning Department pursuant to the requirements of Section 1.130 of the Hood River County Zoning Ordinance. Based on the following findings of fact and conclusions of law, an additional one-year extension has been approved:

- The request was filed on July 23, 2020, which is prior to the permit's expiration date of September 9, 2020;
- The request was properly filed in writing and the appropriate fee of \$420 was submitted;
- Nothing in the County zoning ordinance or State law prohibits the extension;
- None of the criteria that were applied in approving the above-referenced Commercial Land Use Permit in 2014 have changed since the permit was issued as determined by the County Board of Commissioners as part of their final order, dated July 15, 2020, approving your fourth extension; and
- This fifth extension is being granted because of the delays caused by an appeal of your fourth extension approval issued on September 13, 2019, which is still unsettled and has prevented you from reasonably completing all of the conditions of your permit and establishing the approved use during the last extension period.

The new expiration date for your permit is September 9, 2021. On or before this date, the conditions implemented as part of the Planning Director's decision to approve Commercial Land Use Permit #13-0216 must be completed and the approved event site in operation.

Please note that, barring extraordinary circumstances, this extension will likely be the last granted for this permit and so please take care in implementing your proposal in a timely manner. Furthermore, this extension does not allow any alteration of the original conditions of approval listed in the Director's decision letter.

If you have any questions regarding this letter, please give me a call at (541) 387-6840 and send me an email at eric.walker@co.hood-river.or.us.

Sincerely,

Eric Walker

Community Development Director

cc: Michael Robinson, Attorney (via email)
Scott Franke, Thrive Hood River (via email)
Planning File #13-0216



**HOOD RIVER COUNTY
COMMUNITY DEVELOPMENT**

601 STATE STREET
HOOD RIVER, OR 97031-2093
PHONE 541-387-6840 FAX 541-387-6873
Email: plan.dept@co.hood-river.or.us

EXTENSION REQUESTS

Name: Apollo Land Holdings, LLC Date: June 23, 2020

Address: 3961 Barrett Drive, Hood River, OR 97031

Phone: 541.490.4651

Email: deborde@gorge.net

File #: Commercial Land Use Permit #13-0216 Type of Land Use Action: Commercial Land Use Permit

Original Expiration Date: 9.9.16

Reason for Extension: See attached Application Narrative.

Signature of Owner/Applicant: 

Fee: _____ Collected By: _____ Date Received: _____

Approved By: _____ New Expiration Date: _____

Comments: _____

Please note, no guarantee of future extensions or subsequent approval can be made by Hood River County. Please take care in implementing your proposal in a timely manner. Approval of this extension will not alter or change any of the conditions of approval listed in the Director's Decision or Planning Commission Order.

BEFORE THE DIRECTOR OF THE HOOD RIVER COUNTY
COMMUNITY DEVELOPMENT DEPARTMENT

In the Matter of an Application (the)
"Application") by Apollo Land Holdings,)
LLC ("Apollo") for a fifth extension of)
Commercial Land Use Permit #13-0216 for)
property located in the M-1, "Industrial,") FINDINGS OF FACT AND
zoning district, pursuant to Hood River) CONCLUSIONS OF LAW
County Zoning Ordinance ("HRCZO"))
1.130.A.1-4)

1. INTRODUCTION.

This Application requests a fifth extension of Commercial Land Use Permit (the "CLUP") #13-0216 pursuant to HRCZO 1.130.A.1-4. This Application is timely filed before the expiration of the approval of the Extended CLUP on September 9, 2020.

2. EXTENSION APPROVAL CRITERIA.

HRCZO 1.130.A.1-4 contains the approval criteria for this Application. The approval criteria and the Applicant's responses to each approval criteria are set forth below.

A. HRCZO 1.130.A:

"Approval Period & Time Extension. Except as provided for land use permits in EFU and forest zones, any permit issued by the Planning Department shall automatically become null and void two-years after the date on which it was granted unless a building permit has been issued or construction has commenced except as otherwise allowed by State statute, State Administrative Rule or a separate section of the Hood River County Zoning Ordinance. If a building permit is not required all applicable conditions of approval shall have been met within two-years after approval of the permit."

"A two-year extension may be granted by the Planning Director where all of the following standards are met:"

FINDING: This Application requests approval of the fifth extension of the CLUP.

A one-year extension may be approved by the Community Development Director (the "Director") after the first extension if the approval criteria in HRCZO 1.130.A.1-4 are met.

The County approved the CLUP in 2014. No person appealed the CLUP in 2014 and the County's approval of the CLUP became final. The property subject to the CLUP is located in the M-1, "Industrial," zoning district and is not located in a Farm or Forest zoning district. The CLUP did not become void two years after approval on September 9, 2014 because the County has approved extensions of the CLUP since 2016.

The Director can find that this criterion is satisfied.

B. HRCZO 1.130.A.1:

"An extension request is filed prior to the applicable expiration date or within 30-days after that date."

FINDING: This Application is filed prior to the CLUP expiration date of September 9, 2020.

The Director can find that this criterion is satisfied.

C. HRCZO 1.130.A.2:

"The extension request is filed in written form and includes all exhibits and fees required by the County. Extension requests filed up to 30-days after the expiration date are subject to double fee."

FINDING: This Application is filed in writing and includes all exhibits and fees required by the County. The \$210.00 fee for an Extension Application doubles to \$420.00 after the first extension. A check made payable to Hood River County in the amount of \$420.00 is included with this Application (**Exhibit 1**). A completed and signed Hood River County "Extension Request" form is included with this Application (**Exhibit 2**).

The Director can find that this criterion is satisfied.

D. HRCZO 1.130.A.3:

"The provisions of this Ordinance or State law do not prohibit the extension."

FINDING: The provisions of the HRCZO and state law do not prohibit this extension. The HRCZO expressly allows extensions, provided that the approval criteria in HRCZO 1.130.A.1-4 are met.

State law does not prohibit this extension. No state statute, Statewide Planning Goal or administrative rule prohibits this extension for property located outside of a Farm or Forest Zone. OAR 660-004-0018 does not apply to or prohibit this extension. *Hood River Valley Residents' Comm. v. Hood River County*, 78 Or LUBA 478 (2018) (holding that even if not waived, raising OAR 660-004-0018 was collateral attack on the CLUP and that LUBA's decision in *Hood River Valley Residents' Comm. v. Hood River County*, 75 Or LUBA 452 (2017) did not change the applicable law but merely ascertained and declared what the law at issue had provided from the time of its enactment).

The Director can find that this criterion is satisfied.

E. HRCZO 1.130.A.4:

“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.”

FINDING: This criterion requires the Application to demonstrate that the “approval criteria for the original decision” in state or Hood River County law have not changed.

The Hood River Board of County Commissioners (the “Board”) has interpreted this criterion in two ways. First, the Board interpreted the phrase “approval criteria for the original decision” in its decision approving the fourth extension as meaning only criteria actually applied to the CLUP. Second, the Board interpreted the phrase “have not changed” as referring to an administrative or legislative amendment to the administratively enacted or codified law described in the same provision in its second extension decision. The Board of Commissioners interpreted HRCZO 1.130.A.4 as not including decisional law that is not administratively enacted or codified. LUBA affirmed this second interpretation in *Hood River Valley Residents’ Comm.* (2018), *Id.* The Board is the County’s legislative body and its interpretations are entitled to deference.

The Director can find that none of the approval criteria actually applied to the CLUP have changed (been amended) since the original 2014 decision. The Board found in its decision approving the fourth extension that HRCZO 51.10(H) was not applied to the CLUP and was not a relevant approval criterion under HRCZO 1.130.A.4.

HRCZO 1.130.A.4 considers both state and Hood River County approval criteria. The Director can find that no state Goal, policy, statute or administrative rule approval criteria for the original decision has changed since the original decision.

The Director can also find that no Hood River County Comprehensive Plan (the “HRCCP”) or HRCZO approval criteria for the original decision have changed since the original decision.

The Director can also find that “policies” apply only to state law criteria. The plain language of HRCZO 1.130.A.4 does not consider County policies because the structure of HRCZO 1.130.A.4 distinguishes between state and county law and the word “policy” is found only in the section addressing state law.

The Director can find that this criterion is satisfied.

F. Other Issues.

The Director can make the following additional findings.

a. Equitable principles like *laches* do not apply to this Application. *Heidgerken v. Marion County*, 35 Or LUBA 313, 323, 324 (1998).

b. The CLUP decision is final and may not be challenged through this Application. *Hood River Valley Residents' Comm. (2018), Id.*

c. The approval criteria for this Application are found only in HRCZO 1.130.A.1-4. ORS 215.416(8); *Heidgerken*, 35 OR LUBA 327, 329; *Ashley Manor Care Centers, Inc. v. City of Grants Pass*, 38 Or LUBA 308 (2000) (applying ORS Chapter 227 version of ORS 215.416(8)).

3. CONCLUSION.

The Director can find that the approval criteria for the fifth extension are met. The Applicant respectfully requests that the Director approve this Application.