

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

3                                   **Wednesday, January 10, 2018 – 5:30 p.m.**

4                                   Edited by Kim Paulk, Office Manager

5                                   Transcribed by Rev.com  
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8                                   **Continued – Appeal #415-17-0272 of Extension #415-17-0195**

9  
10                                   **Appeal #415-17-0049 of CUP/STR #415-17-0130**  
11  
12  
13

14 Vice Chair von Lubken:

15 We'll call the meeting to order. Just go off the agenda. It's being transcribed, everybody get a chance to peruse  
16 through that.  
17

18 Commissioner Euwer:

19 The one that was here when we got here?  
20

21 Vice Chair von Lubken:

22 Yeah. Just ask me if you guys are [inaudible 00:04:28]. Director's report?  
23

24 Mr. Roberts:

25 So, Ann emailed today, [inaudible 00:04:35] she's sick. She really wanted to be here, but I mean probably now  
26 just as many people in the community is [inaudible 00:04:44] right now. A lot of sick people. She can't be here.  
27

28 Next. And I apologize, Commissioner Weathers, I'm not going to start off with how busy we are. I'll end with  
29 that.  
30

31 Commissioner Weathers:

32 I'll never say that one. Until the next meeting.  
33

34 Mr. Roberts:

35 This is just a sullen reminder and you know this, but you're appointees from the board so that makes you unique  
36 citizens and representatives of our county. You represent Hood River County. And if you [inaudible 00:05:16]  
37 with your neighbors and your communities.  
38

39 So, with that said, this is draft but everybody's going be getting this wire from the County on two meetings  
40 coming up to the board to discuss a visitor tax, sales tax February 5<sup>th</sup> and 20th. So wanted to make you aware  
41 that you'll be getting this, and the bottom line is, you know, it just shows you over the years services have  
42 increased, staffing decreased, funding levels decreased, and the range of cuts that we will be facing, period. If  
43 this isn't part of the solution, I call it; we will be going Curry County. The County will not have its services that are  
44 recognizable, so. All I say is, when you represent the county, please take this into strong consideration of  
45 impacts that could be forthcoming to this community may be devastating.  
46

47 But if this goes much further, you know, as county employees we can't necessarily lobby one way or other; we  
48 can only supply you with the facts.  
49

1 So I got that out of the way before. This is serious stuff. All right. Sales tax, so yeah, 5th and February 20th, if you  
2 want to attend those meetings. Upcoming meetings for you will be February 14th and 24th. No, wait a second.  
3 You got...

4  
5 Mr. Carey:  
6 February 14th is Valentine's Day.

7  
8 Mr. Roberts:  
9 January...

10  
11 Commissioner Euwer:  
12 Twenty-fourth.

13  
14 Mr. Roberts:  
15 January 24th is going to be focused on a package of legislative amendments. The packet has been sent to DLCD.  
16 The goal was to get that out today, didn't get out today. I just told Heather it will go out Friday. Valley Residence  
17 ... yeah there's probably going to be the only person that works on the packet, but it's going to be a thick packet,  
18 so we need two meetings. I recommend two meetings on this. The 24th, carry that over the 14th, and that will  
19 give plenty of time to take in any comments that trickle in, but really what I want to bring to your attention  
20 about this is, won't be really any staff on board to this but there are really substantive attachments.

21  
22 If you want to get into the weeds with a lot of this stuff, you can get into the weeds. That being scenic area,  
23 DLCD legislative policy agendas and LUBA case law. That will be the information in the attachments you can  
24 read, and then there'll be a series of four exhibits with proposed changes, most of them technical in nature. If  
25 this wasn't being driven by the scenic area, we probably wouldn't have gotten around to you in this, so got a  
26 window to try to make the best of this and bring up the scenic area because they're really pushing us to get  
27 these through. They want to get these changes to them by April, 'cause they're trying to cobble together all six  
28 counties to do their mandated [inaudible 00:08:46].

29  
30 I think two meetings will be adequate for these legislative amendments. If we need a third, great, but just a  
31 head's up that if all goes well, I'll be shooting that stuff your way Friday, and what's great about legislative  
32 amendments is there's no rules and what's talked about or who you talk about, this stuff with its, you know,  
33 very open stuff, so. If you can get a jumpstart on the new material, don't hesitate to ask any of those questions.

34  
35 And then, lastly, lots going on, unrelated to planning and community development, but we ended the year with  
36 346 applications, and that's a 59 percent increase since 2011. Just to give you an idea.

37  
38 Commissioner Gehrig:  
39 What was the increase over last year, or the year before?

40  
41 Mr. Roberts:  
42 So, 2016 we ended at three ... Was it 311? I'll get it.

43  
44 Commissioner Gehrig:  
45 So it's just like we're seeing a significant year over year increase.

46  
47 Mr. Roberts:  
48 Yeah. No indication of things slowing down in 2018, but home builders association predicted a recession coming  
49 in 2019, pull back. So that's going on. That's my report, thanks for your time.

50

1 Mr. Carey:  
2 Well, we sent two briefs down to LUBA and lost both of them, and to be honest with you these were not easy  
3 briefs to write because our ordinances are lacking in what we're trying to do in this particular area, and the  
4 petitioners in the matter pointed that out LUBA readily accepted it, sent them back. One of them they  
5 remanded and the other one they just reversed. The one that got reversed was Geller, and the other one was  
6 remanded so we'll talk about what we're going to do on the remanded one, but it points out that there's some  
7 work that needs to be done with that portion of the ordinance, and we've talked about it...  
8  
9 Vice Chair von Lubken:  
10 Is that on the STR?  
11  
12 Mr. Carey:  
13 Yes. We're talking about strictly STR.  
14  
15 Vice Chair von Lubken:  
16 Right.  
17  
18 Mr. Roberts:  
19 You'll see those changes in the next move.  
20  
21 Vice Chair von Lubken:  
22 Okay.  
23  
24 Mr. Carey:  
25 And both these STRs, neither one of them were EFU STRs, but they were in the Rural Residential Zone, and the  
26 primary issue is whether or not the owners of the premises were residents of the property. [inaudible 00:12:12].  
27 So with that, as John indicated, we're working on the ordinance and we'll bring that back to you, see if we can  
28 get that straightened out. I'm actually appreciative a little bit of what's going on here, because, you know, it's a  
29 formation thing and we didn't have very good communication back and forth. We didn't even know that was  
30 suggestible on the point, but I think we're eking along with getting it right so we'll have that back in front of you  
31 in the future.  
32  
33 Vice Chair von Lubken:  
34 Okay, is that it?  
35  
36 Mr. Carey:  
37 Yeah. The residency thing, I think the Board is working on is if you have to actually reside in a residence for a  
38 period of 30 days or is it access for 30 days...  
39  
40 Vice Chair von Lubken:  
41 In a year.  
42  
43 Mr. Carey:  
44 In each calendar year, and residency is not just an easy thing to define because it's so diverse. It used to be easy  
45 to define when a family owned it, but you can't define what a family is now days because we've had so many  
46 changes occur. And residency, you would normally think would be easy to define but apparently there's  
47 different people who have different ideas of what it means. So we need to come to a situation where we define  
48 it and stick by it, see if it flies in the courts the next time. Not the courts, but LUBA. And I'd be glad to answer any  
49 questions that anybody has. What happened here?  
50

1 Commissioner Frothingham:  
2 I'm surprised...was recently surprised that 30 days constitutes residency in a...  
3  
4 Mr. Carey:  
5 I don't disagree with your surprise, but apparently that's been in our zoning ordinance for some time, at least  
6 language that hints that under 30 days is not residence.  
7  
8 Vice Chair von Lubken:  
9 Is that consecutive days or is it just 30 days within the calendar year?  
10  
11 Mr. Carey:  
12 Well that's a good question, too, that needs to be in the definition.  
13  
14 Commissioner Euwer:  
15 Is that in reference to residency or room tax?  
16  
17 Vice Chair von Lubken:  
18 Residency.  
19  
20 Mr. Carey:  
21 Residency.  
22  
23 Mr. Roberts:  
24 But it stems from room tax.  
25  
26 Mr. Carey:  
27 In other words, there's a requirement that if you're renting your home out on an STR basis, you need to show  
28 that you reside in the home, which clearly you do, so I figured ... And that's what they're looking at right now,  
29 [inaudible 00:15:59].  
30  
31 Vice Chair von Lubken:  
32 Anything else, anybody from the general public? Yes, Scott?  
33  
34 Mr. Franke:  
35 Scott Franke, 4584 Leisure Drive, Mount Hood, Oregon. Something came up this week that I think is worth  
36 noting to staff, and to you guys, because it dovetails with a lot of things that are regarding what our County uses  
37 with regard to neighbors having to get involved and comment, either on applications or some references, and a  
38 matter. This isn't about Rogers, which will appear later, but in the Staff Report on that, there are comments  
39 saying that, "Well, gee, there wasn't really much neighbor comment," which perhaps is meant to signal that  
40 there was therefore no complaint about something.  
41  
42 Similarly, on enforcement of things, because Mrs. Keller has so much time doing two jobs and, you know, our  
43 County funds have been restricted. You know, there's only so much enforcement she's able to do, so we've  
44 tended to reply on neighbors complaining about a situation. Well, this week an application was approved, and  
45 one of the neighbors ended up commenting on that application was very reluctant to do so, and I did so on  
46 behalf of the resident's committee, thinking that they probably wouldn't, but a bunch of the neighbors were  
47 very concerned about this situation and got together and commented.  
48  
49 Well, that decision came out earlier in this week, and that may or may not be coincidental with what happened.  
50 This particular person and I could give the name, I got approval, it is someone you would all know and respect as

1 being not a crazy person, but ran into that neighbor whose application was recently approved and he was so  
2 offended by the fact that this person, among the other neighbors, had commented that one, he beat the dog  
3 with whatever stick he had, and she followed down the road a short distance, saying, "I'd like to explain why I  
4 commented on this," and she did not get off the public road, but that neighbor turned around and took a shot at  
5 her with a gun. She's been reluctant to report it to the county sheriff's, but I believe she's going tomorrow, and I  
6 can give the names, probably known to staff already based on what I've said.

7  
8 But it raises the issue of what we all kind of understand, that neighbors are very reluctant to report on other  
9 neighbors for fear that something will escalate. You know, it's unusual that it would go to this extent, but would  
10 create that problem, and that's part of our enforcement and our even commenting on application problems that  
11 I'd just like to emphasize for everyone to keep in mind as we go down the road and try to figure out how these  
12 things should be processed, whether we should suggest it just because neighbors didn't comment that there  
13 aren't concerns and, ultimately, the enforcement side. And so, if staff wants the names of who's involved I  
14 certainly have it reported, but since she hasn't yet been to at least report this to the sheriff's, not that she wants  
15 to enforce it or have a complaint, to what ought to be done, cite this person into court, because again, she  
16 doesn't want to escalate what has already gotten over escalated, but something I just thought you might want  
17 to be aware of. Thank you.

18  
19 Vice Chair von Lubken:  
20 Beating the dog ought to be reported.

21  
22 Mr. Franke:  
23 I agree, and taking a gunshot at someone, although she thought they didn't really mean to hit her. I mean, most  
24 of those are assaults of various sorts.

25  
26 Mr. Roberts:  
27 Did you say an application or compliance? Was this a compliance case or application that was approved?

28  
29 Mr. Franke:  
30 It was an approved application.

31  
32 Vice Chair von Lubken:  
33 Anyone else? Commissioners?

34  
35 Commissioner Euwer:  
36 I do have a question, I guess about the LUBA appeal information. So sometimes if I'm not in my house and I want  
37 to go through my stuff, I look on the County website 'cause it's easier than through my email. I don't see our  
38 packets any longer. Are the packets that are sent out to us posted on the website? I thought at one time they  
39 were.

40  
41 Mr. Walker:  
42 I think it depends on the size. Kim could probably answer that better but I think on ones that are very  
43 voluminous, we typically would put them on the website, so we can instead of sending out copies to people we  
44 can just reference them to the webpage.

45  
46 Commissioner Euwer:  
47 So it's not necessarily a thing that if a person wants to know what's going on they can go to the website and find  
48 out the same thing, the information you have. Is that correct?

49  
50 Mr. Walker:

1 Let me defer.  
2  
3 Mrs. Paulk:  
4 Right now that would be correct. Unless I'm told that they want that on the website, I don't automatically put  
5 everything on the website.  
6  
7 Commissioner Euwer:  
8 Well since it had been I had assumed that it was a thing we did. And then the LUBA things, also, I looked through  
9 and, so the LUBA appeal that came through in February was posted and something about Mitchell Point was  
10 posted, but the LUBA appeal about the Dee Tour was not posted, and of course these ones that just came  
11 through were not posted either, so is it expected that I could go...Because, again, I was looking for that appeal  
12 'cause I didn't have it and I figured it would be posted on the website but it's not there, so do you post the LUBA  
13 appeal...It looks like there's a place where you post the LUBA appeal information. Do you normally ...  
14  
15 Mr. Walker:  
16 We never posted a LUBA decision.  
17  
18 Commissioner Euwer:  
19 Well you posted the Rawson decision.  
20  
21 Mr. Walker:  
22 Because that was one of those very thick ones. It was a remand case and therefore there was an active response  
23 to it, and therefore we chose to put that on our website because it was an active application and because it was  
24 so thick.  
25  
26 Commissioner Euwer:  
27 So if a person submits enough information, it'll get posted.  
28  
29 Mr. Walker:  
30 Well, we're just trying to save paper.  
31  
32 Commissioner Euwer:  
33 Cause this is a voluminous one. We have the 78 pages of the irrelevant [crosstalk 00:22:58] in this one, and it's  
34 not posted. I guess that wasn't quite enough to post it. Okay. Thank you.  
35  
36 Mr. Roberts:  
37 Yeah, I got lost a little bit in there, but typically what should be posted is what's going to planning commissioner  
38 board.  
39  
40 Commissioner Euwer:  
41 But it is...None of it is. None of the packets of anything that we're looking at are posted anywhere that I can find.  
42  
43 Mr. Walker:  
44 And you're right, but the people who are, like, parties, we would likely send you a copy of ... We sent you a  
45 digital copy of this packet. We sent the same digital packet to the appellants and the applicant, so people have  
46 that information, it just may not be available on our website. If you're not a party record and you haven't  
47 participated but you're interested, then you're right. You probably wouldn't find it on our website.  
48  
49 Vice Chair von Lubken:  
50 But you are getting it, right?

1  
2 Commissioner Euwer:  
3 I'm getting it, but I just assumed it was public information since it had been posted previously.  
4  
5 Commissioner Gehrig:  
6 Is it an easy fix? Just add it for consistency in future? I'm still trying to make you guys do more work.  
7  
8 Commissioner Weathers:  
9 Has there been a complaint by the public ... I don't really understand.  
10  
11 Commissioner Euwer:  
12 I just was surprised because it seemed like it was on there, and now I understand that it was on there because  
13 the ones I saw before ... I just thought it was really handy. "I'll go on there and I'll just look up our packet, it'll be  
14 on the website." And it's not, and neither are the LUBA decisions, and it just seemed like something that you  
15 would post, and I guess because you had posted them before I assumed that you would. I just didn't know why  
16 you didn't now. So now I understand. They're not voluminous enough.  
17  
18 Mr. Roberts:  
19 It's been a while because of quick audit. We'll take a look. And I haven't even looked at our website for probably  
20 over a year or so. I'll take responsibility.  
21  
22 Commissioner Euwer:  
23 Okay. Thank you.  
24  
25 Vice Chair von Lubken:  
26 Anyone else?  
27  
28 Vice Chair von Lubken:  
29 Okay, this is a continued hearing of the Valley Residence Community appeal, 415-17-0272 and the extension of  
30 permit number 415-17-0195. So, well, I'm going to ask for your help on how I feel about doing this.  
31  
32 Mr. Carey:  
33 Well, with the matter that was continued to allow for the 7, 7, 7, in so if everybody's received the input for  
34 numbers three submittals, then you know, whenever you think you're ready to ...  
35  
36 Vice Chair von Lubken:  
37 So we can ask questions? Or do we just deliberate?  
38  
39 Mr. Carey:  
40 Well, normally you just deliberate, but I'm not going to tell you that you can't ask questions.  
41  
42 Mr. Walker:  
43 So I think that if you wanted to ask questions of parties, we would then have to reopen the hearing.  
44  
45 Vice Chair von Lubken:  
46 But we can ask questions of staff.  
47  
48 Mr. Roberts:  
49 Absolutely.  
50

1 Vice Chair von Lubken:  
2 Okay. So we will begin our deliberations here.  
3  
4 Commissioner Frothingham:  
5 You probably ought to clear that I'm entitled to be here.  
6  
7 Vice Chair von Lubken:  
8 Oh, are you entitled to be here? Did you go through all your stuff?  
9  
10 Commissioner Frothingham:  
11 Yes I did. I've listened to the meeting, and...  
12  
13 Vice Chair von Lubken:  
14 Okay. Does anybody have a problem with Peter...  
15  
16 Mr. Carey:  
17 Oh, Peter, let me ask you this. Is there any reason why you think you could not make a fair and impartial  
18 decision based on the evidence in this hearing?  
19  
20 Commissioner Frothingham:  
21 No.  
22  
23 Mr. Carey:  
24 So you don't have any personal bias or any interest in the outcome or anything that would keep you from being  
25 an impartial decision maker?  
26  
27 Commissioner Frothingham:  
28 No.  
29  
30 Mr. Carey:  
31 Okay.  
32  
33 Vice Chair von Lubken:  
34 Okay. Now is everybody good with Peter?  
35  
36 Mr. Carey:  
37 Well, yeah but I think if anybody in the audience had an objection or something, we'd hear it.  
38  
39 Vice Chair von Lubken:  
40 Okay.  
41  
42 Mr. Carey:  
43 Is there anybody that objects to Peter. And you went through the whole...  
44  
45 Commissioner Frothingham:  
46 Yes. And if anybody in the audience isn't aware of it, I was not at previous hearing.  
47  
48 Mr. Carey:  
49 So apparently there's no objections, so you may proceed.  
50

1 Vice Chair von Lubken:  
2 You ready?  
3  
4 Commissioner Frothingham:  
5 Yes.  
6  
7 Vice Chair von Lubken:  
8 Peter?  
9  
10 Mrs. Staten:  
11 I'd like to make a request for an additional continuance, since there is only five of you here today.  
12  
13 Vice Chair von Lubken:  
14 What is that going to...are you...You want an additional continuance until when?  
15  
16 Mrs. Staten:  
17 Whenever your next hearing is, isn't it January 24th?  
18  
19 Mr. Roberts:  
20 Well, we know Chair Schuppe won't be here.  
21  
22 Vice Chair von Lubken:  
23 Right.  
24  
25 Mr. Roberts:  
26 I mean as a commission it's your decision. We have more than a quorum. It's up to you.  
27  
28 Vice Chair von Lubken:  
29 So do we need to vote on that?  
30  
31 Mr. Carey:  
32 You could have...vote on that.  
33  
34 Vice Chair von Lubken:  
35 A vote for a continuance. So we need a motion for a continuance to the 24th. Is there a motion?  
36  
37 Commissioner Euwer:  
38 Would it be better if we had a continuance to go on the 24th, or out of respect for what you already planned for  
39 the 24th, because I just saw an email that said that we also having something else happening on the 24th, and is  
40 a re-zoning, correct?  
41  
42 Mr. Walker:  
43 That's correct.  
44  
45 Commissioner Euwer:  
46 We have a resign from Forrest to Ag on the 24th, plus the packet [crosstalk 00:29:05] so maybe the 14th would  
47 be a better time for a continuance to.  
48  
49 Mr. Carey:  
50 If you're going to continuance...

1  
2 Commissioner Euwer:  
3 I'm just asking you, because if you tell me that the 14th is a better day, a more reasonable day, I will...  
4  
5 Mr. Roberts:  
6 Your meetings are pretty well booked through February into March. Other outliers consider what if somebody's  
7 sick again, or traveling, it's ... You know, there's...  
8  
9 Commissioner Weathers:  
10 I'd feel more comfortable just finishing it.  
11  
12 Mr. Roberts:  
13 There's always going to be something.  
14  
15 Commissioner Weathers:  
16 I would say as well, regardless of the outcome, first of all I think that we should continue with the hearing. I  
17 think regardless of the outcome I think it's probably headed up to the Board, so ... Or likely, so. We have a  
18 quorum. I would say we continue with the hearing.  
19  
20 Commissioner Euwer:  
21 I would...  
22  
23 Vice Chair von Lubken:  
24 So are you making a motion to continue for a continuance?  
25  
26 Commissioner Euwer:  
27 I will make a motion to continue, I'm just asking which date you would prefer for to make that motion.  
28  
29 Vice Chair von Lubken:  
30 Well, why don't we see if there's going to be a continuance first?  
31  
32 Commissioner Euwer:  
33 Oh, okay.  
34  
35 Vice Chair von Lubken:  
36 So there's a motion, is there a second? Lack of a second, we'll go ahead and finish.  
37  
38 Commissioner Euwer:  
39 You're right, we don't have to meet back a date.  
40  
41 Vice Chair von Lubken:  
42 Come on, one step ahead. Peter.  
43  
44 Commissioner Frothingham:  
45 Well, I guess the short piece of deliberation to say is that I agree with the Staff. I think that the LUBA decision as,  
46 even the Valley Residence Committee pointed out, would have an impact if the amphitheater was considered  
47 today, but we're not redoing that decision. We can't redo that decision, and I find no compelling evidence in the  
48 materials that have been presented to me that to say that an error was made in making a ministerial decision.  
49 So I would support the staff's request to deny the appeal.  
50

1 Vice Chair von Lubken:  
2 Anything else?

3  
4 Commissioner Frothingham:  
5 No.

6  
7 Vice Chair von Lubken:  
8 Commissioner Euwer?

9  
10 Commissioner Euwer?

11 I agree with the appellant that the approval criteria have changed. The LUBA made clear that the criteria that  
12 needed to be considered was different than what was considered, and to me that is a change. I understand the  
13 difference between the law changing and an approval criteria changing. I believing that approval criteria did  
14 change, and therefore I believe that the appeal should be upheld. Do we need to address whether or not it's  
15 ministerial?

16  
17 Vice Chair von Lubken:  
18 I think you can.

19  
20 Commissioner Euwer:  
21 I think the fact that a decision was made about whether or not to consider the approval criteria would indicate  
22 that it did require discretion and therefore should not have been ministerial.

23  
24 Vice Chair von Lubken:  
25 Anything else?

26  
27 Commissioner Euwer:  
28 No.

29  
30 Vice Chair von Lubken:  
31 Commissioner Gehrig?

32  
33 Commissioner Gehrig:  
34 The basis of the argument, from what I understand, by the appellant was that the case law had changed, being  
35 the Land Use Court of Appeals. The way I understand case law is that it has to go to a court of appeals for it to  
36 actually be case law. The LUBA decision would have impacted that application had it been brought to the County  
37 today, but I don't believe, from what I understand, that is actually case law, just as if the Board Commissioners  
38 would give an opinion on a current law doesn't change that law. That's up to the public. As a result of that, I will  
39 have to vote to deny the appeal.

40  
41 Vice Chair von Lubken:  
42 Commissioner Weathers?

43  
44 Commissioner Weathers.  
45 I'm in agreement to deny the appeal. I feel like the approval criteria was met. I'm certainly a big supporter of not  
46 changing the bar after the fact, and I think ruling on separate land use application should not have bearing on.  
47 What this truly is, is just an approval of a prude Conditional Land Use Permit. I think it would be a horrible  
48 precedent to set. Outside of this particular case, would there be arguments coming through the woodwork on  
49 everybody's, or controversial renewals of an application. I think that would be a really horrible thing for the  
50 County to do, and it would certainly erode any confidence that the County had any ... People just wouldn't feel

1 confident in receiving that application. We're going through with a project, so I am in agreement with the Staff,  
2 and would deny the appeal.

3  
4 Vice Chair von Lubken:

5 I too am in agreement with the Staff. I think you guys did your work and I do not see where a permit that was  
6 issued three years ago can be denied, Use the reference of building the house and getting the roof on, and the  
7 County Building Department coming and saying, "Yeah, sorry, we're not going to let you finish your house." So  
8 that, I'm going to say that I'm going to deny the appeal, also.

9  
10 At this time, we've closed ... Is there anymore deliberations that we need to do?

11  
12 Commissioner Euwer:  
13 May I say one more thing?

14  
15 Vice Chair von Lubken:  
16 Yes, you may.

17  
18 Commissioner Euwer:  
19 I respect what Ed said, and I feel as strongly as you do about keeping the goal posts the same from start to  
20 finish. What concerns me is the corollary to that, which is that if we do not uphold the appeal, we set the  
21 precedent that if the decision is made using criteria that LUBA resoundingly rejects, then we go ...

22  
23 Commissioner Weathers:  
24 On a different land use application.

25  
26 Commissioner Euwer:  
27 Pardon?

28  
29 Commissioner Weathers:  
30 A different land use the application.

31  
32 Vice Chair von Lubken:  
33 It was for a hotel.

34  
35 Commissioner Weathers:  
36 If it were this lady's application, there's no way I could vote the way I did.

37  
38 Commissioner Euwer:  
39 Correct. And so they rejected the criteria that was used...Granted they rejected it because of the hotel, but they  
40 referred to the same arguments that were made, and so in effect we're setting the precedent that if we make a  
41 decision...If a decision is made, which is clearly in many ways...Which have been spelled out by LUBA, not in  
42 compliance with state law, or even with our own county ordinance...Stand. And that is my concern. And I  
43 wrestled as you did...I mean, you didn't, but I wrestled with those two competing problems going forward,  
44 which precedent we're setting, 'cause you're always setting some precedent. So. But I totally understand what  
45 you're saying. I respect that.

46  
47 Commissioner Weathers:  
48 I just don't think the approval criteria for an extension has anything we should...That's not part of the approval  
49 criteria, is LUBA decisions on other land use applications. That's where I am.

50

1 Vice Chair von Lubken:  
2 So, anymore deliberations? At this time we'll close deliberations, and is there a motion on what's before us right  
3 now?  
4  
5 Commissioner Frothingham:  
6 I move that the appeal 415-17-0272 be denied, and if the commission wishes to, that the chair be authorized to  
7 sign the ...  
8  
9 Vice Chair von Lubken:  
10 Is there a second?  
11  
12 Commissioner Weathers:  
13 I'll second the motion.  
14  
15 Vice Chair von Lubken:  
16 It's been moved and seconded, let's take a vote. Commissioner Frothingham?  
17  
18 Commissioner Frothingham:  
19 Yes.  
20  
21 Vice Chair von Lubken:  
22 Commissioner Euwer?  
23  
24 Commissioner Euwer:  
25 No.  
26  
27 Vice Chair von Lubken:  
28 Commissioner Gehrig?  
29  
30 Commissioner Gehrig:  
31 Yes.  
32  
33 Vice Chair von Lubken:  
34 Commissioner Weathers?  
35  
36 Commissioner Weathers:  
37 Yes.  
38  
39 Vice Chair von Lubken:  
40 Chair votes yes, so appeal is denied. We're done, right? Okay. Moving on. Valley Residence Community appeal of  
41 permit number 415-17-0049 CUP/STR 415-17-0130.  
42  
43 Mr. Walker:  
44 I think we have to do another round of ex parte.  
45  
46 Vice Chair von Lubken:  
47 Oh. We have to go through that again. Okay. So we're doing a quasi-judicial hearing.  
48  
49 Mr. Walker:  
50 Okay.

1  
2 Vice Chair von Lubken:  
3 As we stated previously, the Valley Residence Community appeal of permit number 415-17-0049 of the STR 415-  
4 17-0130, does any Commissioner have a potential or actual conflict of interest of this matter?  
5  
6 Commissioner Gehrig:  
7 No.  
8  
9 Commissioner Weathers:  
10 No.  
11  
12 Vice Chair von Lubken:  
13 Does any Commissioner have any ex parte contact to declare? Does any Commissioner have any personal bias in  
14 the matter? Does anyone in the audience wish to challenge the qualifications of any member of this court?  
15  
16 Before we begin this hearing, I'd like to announce several guidelines for those participating in the hearing.  
17 Guidelines are required by the State law as follows, testimony being the only address to be applicable approval  
18 criteria. The applicable approval criteria we're listed in the notice of hearing will be presented by Staff Report.  
19 Any party may request the record be kept open for seven days following the hearing. Any party is entitled to the  
20 request of continuance, if new information is submitted in support of the application.  
21  
22 To be able to appeal an issue, you must state the issue clearly and with enough detail for the Board of  
23 Commissioners to consider the issue in making a decision. I'll describe the procedure as follows:  
24  
25 First, we'll hear the Staff Report for the applicant, who has the burden of proof to show that the approval  
26 criteria is satisfied. We'll go second, and then the opponents. We will allow rebuttal by both parties and  
27 interested agencies. Any questions by the decision makers, then the hearing will be closed, no further testimony  
28 allowed. The Board Commission can deliberate and make a decision, and can continue the hearing to a date  
29 certain finalized a decision or continue the hearing.  
30  
31 Rules of the hearing. This hearing will be recorded, so it will be necessary for anyone offering testimony to step  
32 to the podium, state your name and address prior to commencing your testimony. There is a sign-up sheet in  
33 the back for both proponents and opponents. Please sign up if you plan to offer testimony. Ten minute period  
34 will be allotted. If you need more than ten minutes, let me know. Please avoid repetitive or redundant  
35 testimony and testimony that is not relevant or immaterial to the issue. Please refrain from demonstrating a  
36 support of either side. No clapping, cheering, jeering will be allowed.  
37  
38 Are there any questions, concerns, of this process or rules that I have covered? If not, then we'll begin with the  
39 Staff Report.  
40  
41 Mr. Walker:  
42 Good evening Mr. Chair & Commissioners. As noted, we're here tonight to consider an appeal of the Hood River  
43 Valley Residence Committee, of the Director's decision to approve a Conditional Use Permit application filed by  
44 Marketa and Scott Rogers, authorizing the continued operation of a short-term rental, or STR, out of an existing  
45 single-family residence on a property located off of Cooper Spur Road, south of Parkdale. The property is zoned  
46 exclusive farm use, or EFU, high value farm land. In this zone, STRs are explicitly listed as a conditionally  
47 permitted use, subject to review.  
48  
49 Instead of spending a lot of time reiterating a lot of details within the original staff report, I plan to simply focus  
50 on the specific issues of the appeal as they have been described so far by the appellant.

1  
2 From staff's perspective, this appeal seems to boil down to one main issue; residency. Since the STR regulations  
3 went into effect early last year the appellant has consistently appealed all of STR applications involving dwellings  
4 that are not the applicant's primary place of residence, which is the exact scenario that's involved in this  
5 application. The appellant's primary residence is located in Portland.  
6

7 The appellant believes that the County's Board of Commissioners intent in developing the STR regulations, that  
8 they be operated out of a person's primary residence only, and not out of a secondary residence. The appellants  
9 point to sections 53.30 A and 53.55 A of the County's Ordinance to support its position, Section 53.30 A states in  
10 part that quote, "The use shall be operated by a resident of the property on which business is located." Section  
11 53.55 A similarly states that the STR will be quote, "Occupied and operated by a resident of that dwelling."  
12

13 As explained in Staff Report, the application had been found to comply with these two referenced standards for  
14 the following main reasons;  
15

16 One, the applicants have stated in their application that they occupy the residence approximated 150 days, or  
17 five months out of the year. They explained that they stay at the residence to work and for leisure throughout  
18 the year. Staff finds that the amount of time the applicants occupy the residence greatly exceeds the 30 day  
19 timeframe discussed in the article one, definition of residential/residential use.  
20

21 Two, the applicants are the primary operators of the STR, and are responsible for all aspects of running the  
22 business, including booking reservations, corresponding with customers, maintaining the dwelling, cleaning,  
23 laundry duties, etc.  
24

25 Three, the STR is proposed to operate up to 70 days per year, which is less than the 180 days allowed under  
26 section 5355 A, and therefore will remain incidental and subordinate to the residential use of property.  
27

28 Finally, it's important to note that the County Board of Commissioners held a work session on November 20th,  
29 2017, regarding STRs, and more specifically about the issue of residency. As part of this work session, the Board  
30 clarified that it was not their intent when adopting current STR regulations that they had to be operated out of a  
31 person's primary residence only, as long as they were occupied by the owner for at least 30 days or more during  
32 a calendar year. The Board went on to direct Planning Staff to bring back to them minor changes to the zoning  
33 code, to help eliminate any further confusion on this issue. They also directed Staff to continue to implement  
34 the policy of the 30 day requirement as a baseline for determining residency, until such time as the code was  
35 amended.  
36

37 With this clarification, Staff concludes that the applicants have clearly demonstrated compliance with the  
38 residency requirement as provided in this ordinance, and as the Board intended that they be applied. And so  
39 based on this information and the information provided as part of the Staff Report dated August 24, 2017, Staff  
40 recommends that the applicant's conditional use permit to operate a short term rental out of their residence be  
41 conditionally approved and that the appeal be denied. Thank you.  
42

43 Vice Chair von Lubken:

44 At this time we'll hear from the applicant.  
45

46 Mrs. Rogers:

47 Hello, my name's Marketa Rogers, I am the applicant. I've been working with Eric and his team on filling out this  
48 application to just the best of my knowledge of the concerns that the County has for the STRs and how the  
49 points of view that I understand and I see, yet I still would like to remain firm with my application and the

1 reasons for us doing so. We are a family that has long...Yes, we reside in Portland, but we have been coming up  
2 to Parkdale for years, knowing that it's a place that we wish to be with our family.

3  
4 We looked to purchase this residence for over three years. We finally found this spot on Cooper Spur Road. It  
5 was in our budget. Much had to be done to improve the structure; nothing cosmetic, but certainly for its  
6 structural integrity, and we knew as we purchased it that we would need to rent this out on occasion. Certainly  
7 it is our family home. We use it as Eric stated throughout the year. We're very active up in the valley and within  
8 our Parkdale community.

9  
10 I can counter with what Mr. Franke said about the individual that he stated. It's horrible, yet I can also counter  
11 that case with how we interact with our neighbors in our community, of which we have made many, many  
12 friends.

13  
14 And furthermore, we rent our cabin only when we know we won't be there, so we block it out on the calendar  
15 online. As Eric stated, I take care of every detail of the booking, of the correspondence, of the maintenance, of  
16 the cleaning. That's my job.

17  
18 I wish to have only people who are respectful of the area. We have a lot of literature that we send beforehand  
19 stating that this is an orchard area, that this is a residential dwelling within the orchard. Although we do not  
20 have an orchard ourselves, we are adjacent to a number of orchards. And so far in our time with having guests  
21 up there, there have been absolutely no conflicts.

22  
23 Furthermore, the bulk of our guests are out-of-state guests who book well in advance for weddings. Weddings  
24 that take place up in the upper valley of Mount Hood, because there's simply not enough accommodation  
25 throughout that valley, so there's a need for it, and that's just a component of this situation that also should be  
26 considered. It's not as if ... These out-of-state guests are here for weddings, which take place throughout  
27 multiple venues. We ourselves make it very clear to anyone who books our place that there are no parties  
28 allowed. No rehearsal dinners, nothing that combines the festivities of the wedding would take place at our  
29 place, because it's simply not allowed. It is our home.

30  
31 And this is another thing that I would like to state, It's not a simple rental where there's...I don't know how to  
32 explain. Basically it feels like a home, and people who have written our reviews, all of which I can say are good  
33 reviews, have stated over and over that this is a home, this feels like a home, and it's not a rental. We use it. It is  
34 our home. It is our second home, but we have internet up there that in fact works better than what we have in  
35 northeast Portland, and we work up there. We work hard up there.

36  
37 The trees, we have 12 cherry trees. It was stated in one of the documents that we have an acre of cherry trees.  
38 We have 12 trees, which we have kept pruned and sprayed so that we do not have any conflict with the  
39 adjacent orchards, and all in all I stand with good conscience that we're good members of the community.

40  
41 Also, something that was brought into question in some of the documentations to appeal our decision, that if  
42 we wanted to be good citizens of this County we would not rent it out, but at the same time I feel that we have  
43 abided by the rules and have filled out the application as we were told to do. I know there are a number of STRs  
44 who aren't doing that. That's another component to consider.

45  
46 Anyway, that's all I can say. I'd be happy to answer any questions of how we run our operation. We keep it  
47 clean. No garbage debris, no traffic noise and not a single complaint from our neighbors. And our neighbors,  
48 actually our immediate neighbors, did write a letter saying that they had no problem with the decision. And our  
49 neighbors are very good friends. I mean we are on very good terms.

50

1 So, anything else I will be happy to answer.

2

3 Commissioner Frothingham:

4 I have a question if I may. I know that the local contact person is not particularly nearby. How distant?

5

6 Mrs. Rogers:

7 She is in Mount Hood. She works at the Parkdale gas station. Christine Arnold. She and I became acquainted  
8 over horses. We have a pasture on our property where she has kept her horses, so she is close by. She lives in  
9 the Mount Hood. Her address is I believe on Leisure Drive, but she is employed in Parkdale two miles away.

10

11 Vice Chair von Lubken:

12 Thank you. Any other questions? No. Anyone else for the applicant who wishes to speak? The opponent?

13

14 Mrs. Staten:

15 Heather Staten, the director of the Hood River Valley Residence Committee, and I'm speaking on the  
16 organization's behalf. The first thing I want to request Chair Lubken was a continuance?

17

18 Vice Chair von Lubken:

19 It's von Lubken. A continuance?

20

21 Mrs. Staten:

22 Yes.

23

24 Vice Chair von Lubken:

25 All right.

26

27 Mrs. Staten:

28 And under...

29

30 Vice Chair von Lubken:

31 The reason being?

32

33 Mrs. Staten:

34 Any party can ask for a continuance under ORS...

35

36 Vice Chair von Lubken:

37 Right, I understand continuance. Reason? Just need a small one.

38

39 Mrs. Staten:

40 It provides an opportunity to rebut and submit additional evidence.

41

42 Vice Chair von Lubken:

43 Okay. So, we will have another vote on a continuance, which would be what date?

44

45 Mrs. Staten:

46 You have your choice. You can either do a continuance to a date certain or you can do what you did in the Dee  
47 Tour extension, which was to accept written testimony over a three week period.

48

49 Mr. Carey:

1 So, which are you requesting? Are you requesting the 7-7-7 or are you requesting this to continuance to a date  
2 certain?  
3  
4 Mrs. Staten:  
5 Either one would be fine. [crosstalk 00:56:40]  
6  
7 Vice Chair von Lubken:  
8 Which one would you like Heather?  
9  
10 Mrs. Staten:  
11 I think the written testimony.  
12  
13 Mr. Roberts:  
14 A 7-7-7 would take us through February 14.  
15  
16 Mr. Carey:  
17 The 14th would be the last day for any input added. See what had happened after the hearing.  
18  
19 Mr. Walker:  
20 I think that's fine. Realizing that the applicant has the last rebuttal period, I'm sure that ...  
21  
22 Mr. Carey:  
23 So you're saying that the 14th is fine?  
24  
25 Mr. Walker:  
26 I think the 14th is fine. We have two weeks until the 24th. We're going to have more after three weeks.  
27  
28 Mr. Carey:  
29 Is that satisfactory? The 14th? You can use 7-7-7. I guess that's where it comes out.  
30  
31 Mrs. Staten:  
32 I say no to the seventh.  
33  
34 Mr. Carey:  
35 And I guess it would be up to the Commission to decide.  
36  
37 Vice Chair von Lubken:  
38 If we're going to have it.  
39  
40 Commissioner Euwer:  
41 It's not an automatic...  
42  
43 Mr. Carey:  
44 It is. If you request a 7-7-7, it's automatic.  
45  
46 Vice Chair von Lubken:  
47 You want a 7-7-7?  
48  
49 Commissioner Gehrig:  
50 That's what you requested? Okay.

1  
2 Commissioner Euwer:  
3 So we don't need to vote?  
4  
5 Vice Chair von Lubken:  
6 No  
7  
8 Mr. Carey:  
9 No, but you need to set the...What I'm talking about is setting the date.  
10  
11 Vice Chair von Lubken:  
12 So the date would be the 14th of February, correct?  
13  
14 Commissioner Gehrig:  
15 Is the last, certain.  
16  
17 Commissioner Weathers:  
18 We need to list out the seven day periods, right? So, the 17th, right, would be the first. The 24th.  
19  
20 Vice Chair von Lubken:  
21 The 31st.  
22  
23 Commissioner Gehrig:  
24 Thirty-first.  
25  
26 Commissioner Weathers:  
27 Thirty-first.  
28  
29 Vice Chair von Lubken:  
30 And so then we would have the rest of the hearing on the 14th, is that correct?  
31  
32 Mr. Roberts:  
33 Correct.  
34  
35 Vice Chair von Lubken:  
36 Okay. So the 17th, 24th...Seventeenth for the first seven days, 24th for the second seven days, the 31st for the  
37 final, and the hearing will continue on the 14th. Correct? Okay.  
38  
39 Mrs. Staten:  
40 And just to explain to the applicant, the first seven day period is for new evidence from any party. The second  
41 seven day period is rebuttal testimony to any new evidence received, and then the final seven day period is your  
42 opportunity to do final rebuttal and no one but the applicant can submit evidence in that time period.  
43  
44 Vice Chair von Lubken:  
45 Yeah, we can still listen to the rest of the stuff, right?  
46  
47 Mr. Roberts:  
48 And then that way you can close the meeting out and just deliberate about them.  
49  
50 Vice Chair von Lubken:

1 Yeah, that's what we wanted. Thanks, Ed.  
2  
3 Commissioner Weathers:  
4 No, I'm just...[inaudible 00:59:43] to extend farther.  
5  
6 Vice Chair von Lubken:  
7 Okay, Heather.  
8  
9 Mrs. Staten:  
10 Thank you very much. A year ago the River County Board of Commissions...  
11  
12 Vice Chair von Lubken:  
13 Heather. State your name.  
14  
15 Mr. Staten:  
16 Oh, sorry. Thought I did it at the beginning, but I will again. Heather Staten for the Hood River Valley Residence  
17 Committee. A year ago, the Hood River County Board of Commissioners adopted code to regulate short-term  
18 rentals. The number of STRs in the county had increased significantly over the last few years, and the Board of  
19 Commissioners wanted to get ahead of the issue by adopting regulation.  
20  
21 This appeal is your first time to apply and interpret the STR code provisions. There are often unexpected issues  
22 that get identified as new code is applied and that's the case here. Some of those issues will likely get addressed  
23 by your commission later this month as you look at legislative code updates to the STR ordinance. Meanwhile,  
24 you must apply the code as written, adopted and acknowledged.  
25  
26 The applicants here, Marketa and Scott Rogers, are some unusual among STR operators in that they have made  
27 a good-faith effort to make their STR legal. They've actually applied for a land use court permit. According to the  
28 data that we have compiled from county tax records, property records and online sources, like Air BnB, Vacasa,  
29 Home Away and local rental agencies, there are approximately 127 STRs operating in the unincorporated parts  
30 of Hood River County. In the year that the STR ordinance has been adopted, just 28 have applied for a permit  
31 and about 35 pay transient room tax. At the time this application was approved, the applicant had not  
32 registered for or paid transient room tax.  
33  
34 Now I wanted to get into the approval standards. The residency standard under ORS 215.448 and the Hood River  
35 County Zoning Ordinance, section 55.30 and 53.55, this STR is located on land that's zoned exclusive farm use.  
36 Farmland is regulated not just by Hood River County's local code but also by State law. ORS 215 283 sets out the  
37 uses it can be allowed on EFU, and if the use isn't listed it's not permitted.  
38  
39 While STRs are not specifically listed in ORS 215 283, home occupations are, and the county has chosen to allow  
40 STRs as a home occupation. The County's also used the home occupation provisions in order to allow bed and  
41 breakfasts, and they reviewed those under home occupation standards for many years. Home Occ's are what is  
42 called the "sub two use" in ORS 215 283, and that means they are used from subsection two of that statute. And  
43 the subsection two uses are uses that the County can allow, if it chooses, but they don't have to, and  
44 additionally the County has leeway and they can add their own limitations and their own criteria to sub two  
45 uses. This is to differentiate them from sub one uses, where the state sets all the laws and the County doesn't  
46 get to add extra requirements.  
47  
48 But for sub two uses, at minimum the county must include the criteria that the legislature has included, and I  
49 believe I sent you guys some packets of testimony. One thing I want you to look at is this copy of the statute,  
50 ORS 215 448, which is the Home Occupation Code. A key component of ORS 215 448 and of the Hood River

1 Zoning Ordinance section 53.30 for home occupation standards, and 53.55 for short-term rental standards, is  
2 the requirement that STRs shall be operated by a resident of the property on which the business is located.  
3 What's meant by the word "resident" and what qualifies a person as a resident is a key finding that the planning  
4 commission will need to make.

5  
6 The word "resident" is not defined in County Code, and the August 24th, 2015 findings for conditional use  
7 permit member 170,130, planning step attempts to reverse engineer a definition of "resident" from section  
8 1.160's definition of residential use.

9  
10 The definition of "residential use" is framed as a negative. It says, "Uses where tenancy is arranged on a  
11 transient basis of less than 30 days will not be considered residential." This definition was added to the zoning  
12 code as part of the STR update, and it was explicitly to distinguish STRs from residential uses. The County's  
13 always considered them a commercial use. And this definition was, in fact, added at the Residence Committee's  
14 request, and it was really to protect the County from measure 37 claims. If you try to restrict a residential use of  
15 a property, then the county is potentially open to measure 37 claims, and this was a way of defining residential  
16 uses to explicitly not include transient uses, so that the County had the leeway to regulate STRs without putting  
17 themselves in any measure 37 danger.

18  
19 And then, as the Staff reported, at the November 20th work session, the Board of Commissioners clarified that  
20 for the purposes of the short-term rental standards, their opinion was that as long as the owner of the property  
21 occupied the property for 31 days or more a year that the County would consider them a resident. However, in  
22 this case the County is limited in its ability to substitute its own definition and interpretations, because the core  
23 standard that it shall be operated by residents has its origins in State law. The County is taking a provision of  
24 State law that ORS 215-448 and that's what they're applying here. While the courts afford the County deference  
25 when it's interpreting its own code, they don't give the County deference in interpreting State law. If the County  
26 provides an implausible definition of "resident," it will not be upheld by the courts.

27  
28 In making a determination of who qualifies as a resident, the County must search for a definition that expresses  
29 what the legislature itself intended when it passed ORS 215-448. That statute allows home occupations in any  
30 zone, but on resource lands, and farm forest and mixed farm and forest zones, legislature specifically added a  
31 list of requirements, including the requirement that the business be operated by a resident of the property.  
32 Oregon State Wide Land Use System offers special protections to farm and forest land.

33  
34 The legislative history in text of ORS 215-448 supports that the legislature intended home occupations to be  
35 businesses run by a resident, not merely a property owner. The onsite oversight of the business by a person who  
36 lives on the property is a key element to minimizing negative impacts in resource zones. The legislature's  
37 expectation was that operator of the business would be onsite and would be able to do things like be able to  
38 control what happens at their businesses in ways that could impact other properties. In this particular STR case,  
39 and in any STR where the property owner is hours or states away, they don't have a way of providing that onsite  
40 oversight that would prevent conflicts with neighbors.

41  
42 Oregon's Land Use Board of Appeals recently ruled on two STRs filed by the Residence Committee. One was  
43 reversed and the other remanded. The one that was remanded...It was remanded on procedural issues and they  
44 didn't really reach the merits of the County's definition of resident, but they did offer guidance on the subject.  
45 And in fact Mr. Carry, when we were down at LUBA, explained to LUBA that the Board of Commissioners had  
46 recently adopted an interpretation that 30 days or more would count as residency, and it actually engendered  
47 some of the most robust questioning by the LUBA panel of judges. One of them said, "You mean if somebody  
48 lives in their house for July and rents it out for the other 11 months, you would consider them a resident?"

49

1 I think the LUBA Corp. was very skeptical, and in fact they provided a footnote in the decision, and here's the  
2 footnote. "However, we note that if we are reviewing the County Planning Directors and their Planning  
3 Commission's interpretation of the undefined operative term resident, we would first look to the plain, ordinary  
4 meaning of the term found in the dictionary and rely on that plain, ordinary meaning in applying HRCZO 53.30  
5 to the facts presented." And its findings shall prove this conditional use permit, and in other STR permits, Staff has  
6 provided a definition from the Merriam-Webster online dictionary to support giving resident status to people  
7 who spent far more time away from the subject dwelling than in it.

8  
9 Page eight of the staff report lists that definition of resident, which says, "A resident includes living in a place for  
10 some length of time." However, the definition that the Staff reported for resident when the word is used as an  
11 adjective, like, "Sadie is my resident dog." But in the Zoning Code and in the statute, resident is used as a noun.  
12 I've attached two more definitions for you, from the Merriam-Webster dictionary. When resident is used as a  
13 noun, the definition is, "One who resides in a place." The definition of resides means, "To dwell permanently or  
14 continuously. To occupy a place as one's legal domicile." Using LUBA's guidance, the plain, ordinary meaning of a  
15 resident is a person who lives in a place permanently or continuously as their legal domicile.

16  
17 The State of Oregon frequently uses the term "resident" for everything, from getting a driver's license to  
18 registering to vote to receiving State benefits. Under statutes for those purposes, a person is a resident if they  
19 are domiciled in a particular dwelling. Under [inaudible 01:11:05], Oregon law a domicile is described as a place  
20 an individual considers their true fixed permanent home. An individual's domicile is where he intends to return  
21 after an absence. An individual can only have one domicile at a time, and it continues until the individual shows  
22 intent to abandon the domicile, acquire a new domicile, and he physically resides in the new domicile. We  
23 believe that when adopting ORS 215-448, the legislature intended the word "resident" to have the same  
24 meaning it commonly does for state purposes. We believe that the County Board of Commissioners' definition of  
25 31 days equals a residency is implausible as an interpretation of what the legislature intended. We do not  
26 believe the legislature intended 31 days to be a resident.

27  
28 The next section is about home rule at a previous hearing. There's been some questions about the effects of  
29 being a home rule county on Oregon Land Use Laws, and we got a little guidance from an attorney on how home  
30 rule impacts that. County home rule authority relates primarily to a local government's choice of political form  
31 and it does not permit Hood River County to sidestep State statute or applicable case law. Home rule authority  
32 does not permit a County to disregard State statutes or applicable case law. Home rule authority merely permits  
33 a local government to choose its structure of government. Home rule charters provide for the exercise by the  
34 County of authority of the matters of County concern, but the State still reserves for itself authority over matters  
35 of statewide concern, and the land use program is an area where the State explicitly saves that authority for  
36 itself. So again, the County's definition of "resident," in this case, needs to accord with what the State would  
37 want it.

38  
39 The primary use of the building should remain residential. In two different sections of the code there's  
40 requirement that a home occupation, in this case a short-term rental, has to be limited in extent and fairly  
41 incidental and subordinate to the use of the dwelling for residential purposes, and then in the short-term  
42 residential standards, 53.55, there's another provision, "The primary use of the building shall remain  
43 residential." Under both of these, the residential use...That's the use by the applicant of the dwelling as their  
44 personal residence, is supposed to be the primary use of the dwelling, and the STR is supposed to be an  
45 incidental and subordinate use. If the dwelling is used for as many or more days for vacation rentals than it is for  
46 the residential use by the owners, then the STR's no longer subordinate and incidental. The STR becomes the  
47 primary use.

48  
49 Yes, the applicant stated that they reside at the property two or three days a week all year, for somewhere  
50 between 100 and 150 days a year. It's unclear to us if that number is an estimate or it's something that they

1 actually track. I did go online and I can submit this later. Online sites will show a set of calendars of dates, and I  
2 did look at that about the next six months, and there were very few periods that were blocked out, which  
3 indicates to me that the property is generally available for rentals most of the time. You know, I would say  
4 probably in the six month period going to August, less than 15 days were blocked out, so I question how much  
5 the applicant uses it for their exclusive personal use versus having it available as a rental.  
6

7 The conditions of approval have condition number four, which is the STR shall be operated no more than 70  
8 days a year, which is about half of the days that the applicant said that they were residing in the STR. We think  
9 that that's a pretty reasonable standard, because doing something like that, saying that you can rent it for half  
10 as many days as you live in it to us would be able to make the application fulfill the incidental and subordinate  
11 aspect.  
12

13 And then the final thing is that we didn't see findings on ORS 215-296 that says significant cost and impact test,  
14 which is a requirement of sub two uses. It was just an additional finding that probably needs to be made.  
15

16 And for those reasons we would request that you reverse this approval and uphold our appeal. Are there any  
17 questions?  
18

19 Vice Chair von Lubken:  
20 Any questions? Anyone else?  
21

22 Mrs. Rogers:  
23 Can I comment?  
24

25 Mr. Walker:  
26 I think after the ...  
27

28 Vice Chair von Lubken:  
29 Yeah. Yeah.  
30

31 Mr. Harvey:  
32 My name's Alex Harvey. I farm several orchard blocks within a quarter mile of this proposed STR, and I'm  
33 opposed to it really for several reasons.  
34

35 One is I now farm next to several property owners who have second residences, and live outside the area and  
36 use these as vacation properties. It's difficult. I have complaints about things as minor as employee traffic, or  
37 harvest truck traffic to get my crop to the packing house. Things that are fairly within the realm of trying to make  
38 a living farming commercial tree fruit on EFU property. I'm really opposed to STRs in general on EFU ground. As I  
39 think it provides a slip or slope for us to continue to make a living and have a profitable commercial fruit growing  
40 business in this valley.  
41

42 And I'd like to point out that if you...Second point, if you open up STRs to people who it's not their primary  
43 residence, they can come up and vacation for a very short duration. 30 to 60 days, maybe, at a minimum, and  
44 then they can rent out their property. They greatly change the economic spectrum in terms of how you can cash  
45 flow that property, and already skyrocketing land values that we have to compete with for farm ground. Now  
46 you have a significant economic disadvantage if you can do that and basically just finance a second home, and  
47 then still have a commercial operation there, where you're renting it out 70 to 180 days a year. You're quickly  
48 going to erode the commercial farm use in this valley. You can start to pop these up all over and it makes  
49 economic sense, so, I know people are getting other areas in the state, and they're fairly common. Quickly

1 people find that model and start to use it if they know it's available to them, so I strongly oppose this on that  
2 basis as well. Thank you.

3  
4 Vice Chair von Lubken:  
5 Anyone else? Rebuttal?

6  
7 Mrs. Rogers:  
8 Well, to Heather's point about how...

9  
10 Vice Chair von Lubken:  
11 You need to come up here. You got to say your name again.

12  
13 Mrs. Rogers:  
14 My name is Marketa Rogers and, just the way that the calendar is blocked and unblocked and whether or not  
15 that is therefore a verification of how we use our property, I would just like to state that we do certainly block  
16 out dates when absolutely positively we know that my parents are coming or going. Otherwise, we're up there  
17 very spontaneously and sporadically throughout the week, and the fact that weeks aren't blocked off has  
18 absolutely no indication that therefore we are not there. So, that's just something that came as a surprise to me.  
19 That's just not how we book our time there.

20  
21 And secondly, with the transient tax, I have spoken to Sandra Borowy twice now about the application of the  
22 transient tax, and I've been told quite specifically that nothing should still be filled out until this is resolved,  
23 although I have completely filled out and have on record the private property inventory for our property, which  
24 was required. So I am documented here as a STR, but with Mrs. Borowy, she told me after this has been settled,  
25 that's when that transient tax should be paid, so that's two points.

26  
27 So again, just to outline that I'm not trying to shirk or try to hide any of my responsibilities.

28  
29 Vice Chair von Lubken:  
30 Any other rebuttal?

31  
32 Mr. Carey:  
33 Mr. Chair, I just want to say one thing for clarification. Heather mentions the word domicile, and I believe  
34 inferred that it's the same as residency, and it's not the same as residency. Domicile refers to something like  
35 where a person's entitled to vote. I could domicile to cross the river, and my driver's license can say that the  
36 address and everything else, but I could live over here and reside here full time. I just wanted to spell that out,  
37 but it's not the same term. In the law, domicile is a specific term that doesn't come up with the same meaning as  
38 residence. I'm just saying that.

39  
40 Mrs. Staten:  
41 No, and I wasn't saying that it was. Now some definitions of resident for other purposes, like getting a driver's  
42 license, uses the word domicile as part of a definition of what it means to be a resident.

43  
44 Mr. Carey:  
45 What domicile means where you intend to have your permanent residence. That's what domicile means. That's  
46 all I wanted to say.

47  
48 Vice Chair von Lubken:  
49 Okay. Are there any questions by the Board or the parties?

50

1 Commissioner Euwer:  
2 Are we going to...  
3  
4 Vice Chair von Lubken:  
5 We're going to ask questions, you can ask your question.  
6  
7 Commissioner Euwer:  
8 Ask questions, but we're going to deliberate at the end of the next one.  
9  
10 Vice Chair von Lubken:  
11 Yes. Commissioner Frothingham?  
12  
13 Commissioner Frothingham:  
14 Not at this time.  
15  
16 Vice Chair von Lubken:  
17 Commissioner Euwer?  
18  
19 Commissioner Euwer:  
20 Not at this time.  
21  
22 Vice Chair von Lubken:  
23 Commissioner Gehrig?  
24  
25 Commissioner Gehrig:  
26 Yeah, I have one. Marketa, you pay the transient tax in the prior years before you planted this application?  
27  
28 Mrs. Rogers:  
29 The only transient tax was through...There are two systems that BRBO and the Air BnB, the Air BnB pays it  
30 automatically, and that has been paid through Air BnB.  
31  
32 Commissioner Gehrig:  
33 And it's BRBO?  
34  
35 Mrs. Rogers:  
36 BRBO, no.  
37  
38 Commissioner Gehrig:  
39 Okay, and did you rent on BRBO?  
40  
41 Mrs. Rogers:  
42 Predominantly Air BnB and some on BRBO, but that was also talked about with Mrs. Borowy in terms of just  
43 reconciling all of that after this has been...  
44  
45 Commissioner Gehrig:  
46 Thank you. And the personal property tax, were you registered for that prior to this application as well?  
47  
48 Mrs. Rogers:  
49 Yes.  
50

1 Commissioner Gehrig:  
2 Okay. Thank you.  
3  
4 Vice Chair von Lubken:  
5 Commissioner Weathers.  
6  
7 Weathers:  
8 No questions at this time.  
9  
10 Vice Chair von Lubken:  
11 I don't have any questions at this time. So this time the hearing is continued until the 14th.  
12  
13 Mr. Roberts:  
14 Close, close the hearing.  
15  
16 Vice Chair von Lubken:  
17 Close the hearing? Okay, this time we're going to close the hearing. And we will...What?  
18  
19 Mr. Roberts:  
20 And you can deliberate before you continue.  
21  
22 Mr. Carey:  
23 No. They don't deliberate until...  
24  
25 Vice Chair von Lubken:  
26 Until we get the rest of our stuff.  
27  
28 Mr. Roberts:  
29 Well I didn't know if you had any additional questions of Staff.  
30  
31 Vice Chair von Lubken:  
32 No. Not at this time. I don't, at least. Does anyone else have any questions of Staff? So we're going close the  
33 hearing. So the hearing's now closed, and it is continued until the 14th of February. And do I need to read the  
34 seven days of through the ...  
35  
36 Commissioner Gehrig:  
37 Probably a good idea...  
38  
39 Vice Chair von Lubken:  
40 So the first seven day period is the 17th, and then the 24th for the second, and the 31st of January for the third,  
41 and the hearing will be continued on the 14th at 5:30 of February. Anything else?  
42  
43 Mr. Carey:  
44 And after the hearing you'll deliberate?  
45  
46 Vice Chair von Lubken:  
47 After the hearing we will deliberate, and make a decision.  
48  
49 Commissioner Gehrig:

1 Is there a way we can get the...During the seven day periods, can we get...Or at least personally I would rather  
2 be able to get like the first seven days, the next seven days, the next seven days, so that we get all the packets at  
3 once. And that way you can email that earlier?  
4

5 Mr. Walker:

6 Sure, I thought that I had done that on the last one, where I'd sent you out emails every seven days  
7

8 Commissioner Gehrig:

9 Okay, yeah. It was the holidays.  
10

11 Mr. Walker:

12 But yes, what we will do is we'll send out the comments every seven days, and then we'll send you the full  
13 packet at the end. So then you have it for the 14th.  
14

15 Commissioner Gehrig:

16 Thank you.  
17

18 Vice Chair von Lubken: Anything else? Meeting adjourned.  
19