September 16, 2014

Via Email and First Class Mail

Commissioner Robert Main
Commissioner John Sweet
Commissioner Melissa Cribbins
Jill Rolfe, Planning Director
Planning Department
225 N. Adams St.
Coquille OR 97423

Re: Testimony for McWilliam Appeal, AP-14-03

Dear Commissioners,

On behalf of Deborah and Kevin Houshouri, Terry and Shari McWilliam, Terry Magill, Dan and Kari Seals, Shawn O'Connor, Mike Meszaros, and Ellie Winslow, please accept this written testimony for file number AP-14-03, an appeal of a violation determination. I concur with the staff report dated September 11, 2014, which identified the following two issues:

1. Are the “events” commercial use?

2. Have the property owners developed on the property without proper land use permits?

As to (1), I agree that the service that renders the unpermitted use commercial is use of or admission to the mud bog area or the motocross track. Because the property is zoned EFU, the only commercial use permitted would be one that is in conjunction with a farm use. The mud bog and motocross track are not uses in conjunction with a farm use. Finally, staff is correct to note that the unpermitted use is not temporary. Indeed, it is permanent, as evidenced by the physical manipulation of the land by heavy machinery to create the mud bog area and the motocross track.

As to (2), it is undisputed that there has been a physical change to the property to carry out a commercial use. The water tanks are used to create mud for the mud bog area. Therefore,
if the water tanks are determined to water livestock, then the water tanks cannot be used for mud bog events in addition to watering livestock. Regardless, the water tanks have not been approved according to the land use process, and, therefore, it is undisputed that the appellants are carrying out an unpermitted use.

The physical changes to the land as a result of creating the motocross track are related not only to the commercial use but also to other uses, including a high intensity recreational park. Cessation of the commercial use still leaves the motocross track in place. The track itself, however, cannot be used, regardless of whether it is a commercial use, because it was constructed without land use approval. Therefore, I encourage the Board to find that the Appellant has not carried the burden of proof in rebutting that the Appellant carried on a commercial use and developed the property without the appropriate land use permits.

In closing, I respectfully request that the Board of Commissioners deny the appeal; find that the appellant violated the Coos County Zoning and Land Development Ordinance; order that the use be abated and the appellant return to the land to its natural contour. I also respectfully request that the Board determine the motocross track is a nuisance. Finally, I respectfully request that the County impose a fine pursuant to ORS 203.065 should there be noncompliance with this Board's determination. Given the evidence before the Board, see additional photos attached as Exhibit A, a ruling that would overturn the decision below could not be supported by substantial evidence in the record.

Sincerely,

[Signature]

Sean T. Malone
Attorney for Complainants

Cc:
Clients

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Another event by: COOS Riders ASSOCIATION