September 24, 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: Rebuttal Testimony for McWilliam Appeal, AP-14-03

Dear Commissioners,

On behalf of Deborah and Kevin Houshour, Terry and Shari McWilliam, Terry Magill, Dan and Kari Seals, Shawn O’Connor, Mike Meszaros, and Ellie Winslow, please accept this rebuttal testimony for file number AP-14-03, an appeal of a violation determination. A hearing was held on September 18, 2014, and a request to leave the record open was received. The record will be left open for rebuttal until September 25, 2014, at 5pm. 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), an exhibit (referred to as Exhibit 2 on the County’s website) was submitted, entitled “Agreement between Coos Riders & Redrock MMX/McWilliam,” clearly indicating that the property owner engaged in a commercial use by accepting the gate and camping fees, and permitting food and drink vendors. See Exhibit 2 (under “RedRock MMX Responsibility,” it states “keeps gate & camping fee”; “food & drink vendors”). These commercial aspects of the events are reinforced by other submissions showing flyers indicating entry and camping fees, monetary race prizes, and so forth. These activities fall squarely within the definition of “commercial uses” contained in the Coos County Zoning and Land Development Ordinance.

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Exhibit: 6
Date: 9-24-14
(CCZLDO). See CCZLDO at II-10 ("Commercial uses: Privately-owned or operated facility or place of business open to the public for sale of goods or services. Examples include: restaurants, taverns, hotels motels, offices, personal services, recreational vehicle parks, and campgrounds. Public facilities offering similar goods of services are also defined as commercial uses."). Here, the Appellant accepted money in exchange for camping on the property, and, therefore, the Appellant was operating an unpermitted campground on the subject property. The Appellant also accepted money in exchange for allowing the public to enter onto the property and either participate as a motocross/mud bog rider or act as a spectator. Under any construction of the word "commercial," the Appellants have engaged in a commercial use.

As to (2), it is undisputed that use of land has occurred without the appropriate land use approvals. From the physical manipulations of the land to create the motocross track and mud bog course to the unpermitted water tanks stored on the property, there is simply no way to conclude that what has occurred on the subject property was performed with the necessary authorizations. These authorizations are constitute the fundamental basis for Oregon's comprehensive land use system. Issue (2) could be resolved in Appellant's favor by pointing to the appropriate land use authorization that permits the motocross/mud bog course. The Appellant, however, cannot because the Appellant has neither sought nor received such authorizations from the County. As such, this issue can be decided with relative ease, affirming the decision below.

A determination from the County that would overturn the decision below could not be supported by substantial evidence in the record and would fundamentally misconstrue applicable law. In conclusion, I concur with the staff report's findings, and respectfully request that the decision below be upheld.

Sincerely,

Jim Malone

Sean T. Malone
Attorney for Complainants

Cc:
Clients

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