



RE: Continuance - 217-23-001215-PLNG [IWOV-PDX.FID4923157]

Smith, Adam <asmith@schwabe.com>

Tue 11/7/2023 4:34 PM

To: Carol Macbeth <carol@colw.org>

Cc: Will VanVactor <Will.VanVactor@crookcountyor.gov>; Katie McDonald <Katie.McDonald@crookcountyor.gov>; Oswald, Bailey M. <BMOswald@schwabe.com>; Greg Huston <ghkingranch1962@gmail.com>; John Eisler <John.Eisler@crookcountyor.gov>; Tami MacLeod (tmacleod@lynchmurphy.com) <tmacleod@lynchmurphy.com>

Carol,

Sorry if the intent behind our request was not clear.

My understanding is that there is no way to just cancel the hearing at this juncture because notice was sent to multiple neighboring property owners. The rights of those other neighboring property owners who did receive notice must also be taken into consideration. Those other property owners may show up to the Planning Commission's meeting tomorrow expecting to testify during the public hearing. Accordingly, the Planning Commission is obligated to open the hearing tomorrow and receive testimony from anyone desiring to provide such testimony. See CCC 18.172.081(16)(a)(i).

To cure the aforementioned issue while likewise ensuring that both you and Ms. McLeod are provide at least 20 days notice of the continued hearing, the Applicant voluntarily requested the continuance. The Applicant's request for a continuance must be granted. See CCC 18.172.081(16)(a)(i). Any other party's request for a continuance is discretionary. See CCC 18.172.081(16)(b). So, only the Applicant is in a position to ensure that the hearing will, in fact, be continued, thereby ensuring that no party needs to waste resources prepping for a hearing that may or may not be continued.

As explained above (and whether appreciated or not), requesting the continuance was intended to be a courtesy extended to both you, the Orrs, and the County. We were prepared to proceed with the hearing tomorrow night, and my client is of course self-interested in the County issuing a land use permit in this matter sooner rather than later. It should also be noted that because the Applicant requested the continuance, the County's 150-day deadline to issue a final decision was tolled. See CCC 18.172.081(16)(e). We nonetheless requested the continuance to help avoid the underlying dispute high-centering these proceedings. If that dispute between COLW and the County needs to continue on in a different forum, I respectfully request that it not further burden my client or these proceedings.

Katie – Please provide this email thread to the Planning Commission and include the email thread in the record.

Thanks,
-Adam

Adam Smith
Shareholder
Pronouns: he, him, his
D: 541-749-1759
asmith@schwabe.com

SCHWABE, WILLIAMSON & WYATT
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From: Carol Macbeth <carol@colw.org>
Sent: Tuesday, November 7, 2023 3:50 PM
To: Smith, Adam <asmith@schwabe.com>
Cc: Will VanVactor <Will.VanVactor@crookcountyor.gov>; Katie McDonald <Katie.McDonald@crookcountyor.gov>; Oswald, Bailey M. <BMOswald@schwabe.com>; Greg Huston <ghkingranch1962@gmail.com>; John Eisler <John.Eisler@crookcountyor.gov>; Tami MacLeod (tmacleod@lynchmurphy.com) <tmacleod@lynchmurphy.com>
Subject: Re: Continuance - 217-23-001215-PLNG [IWOV-PDX.FID4923157]

Thanks Adam,

The law is not a courtesy. The law requires 20 day's notice to parties, not a day less, and LandWatch and Ms. McLeod were not provided with such notice. LandWatch is now requesting a rescheduling that will permit 20 days' notice and if it is not provided it will be further evidence supporting action by LCDC for repeated failure to follow the land use laws even when the applicable law and errors are specifically pointed out.

LandWatch will agree to a continued hearing on the condition that the record will be kept open for written testimony for at least 7 days after that hearing.

Best regards,
Carol Macbeth

Le mar. 7 nov. 2023 à 12:11, Smith, Adam <asmith@schwabe.com> a écrit :

Katie & Will,

As you know, our firm represents the Applicants in the above-referenced matter. In that capacity, we reviewed the new exhibits added to the record in advance of the Planning Commission's public hearing currently scheduled for tomorrow, November 8, 2023. Those exhibits include correspondence between Carol Macbeth representing COLW (CCed) and Tami MacLeod representing the Orrs (CCed). Ms. Macbeth's correspondence complains that COLW did not receive 20-days advance written notice of the public hearing. Similarly, Ms. MacLeod complains that although her clients received notice, she did not individually receive notice as well. In response, Will Van Vactor's correspondence clarifies that the County provided notice of the upcoming hearing as specifically required by the CCC and state law.

As stated therein, our clients submitted their subject application as a means to find common ground and resolve a long-standing dispute with their neighbors, the Orrs. The Applicants additionally have the same interest in resolving any objections and concerns that may be levied by COLW. In that same interest of cooperation, the Applicants request a continuance of tomorrow's public hearing to enable County staff to provide a courtesy notice to both Ms. Macbeth (on behalf of COLW) and Ms. MacLeod. Although we are prepared to proceed with the hearing tomorrow night, the Applicants want to ensure that both Ms. Macbeth and Ms. MacLeod are provided the same opportunity to thereby ensure that the public hearing helps resolve this long-standing neighborhood dispute.

Please note that this request for a continuance is specifically being submitted pursuant to CCC 18.172.081(16)(a)(i) which states that "[p]rior to the date set for an initial hearing, an applicant shall receive a continuance upon any request." Notably, our client's request for a continuance is intended to also nullify COLW's argument in its November 3, 2023 letter that tomorrow's hearing must be "cancelled and rescheduled." Also pursuant to CCC 18.172.081(16)(a)(i), "[i]f a continuance request is made after the published or mailed notice has been provided by the county, the hearing authority shall take evidence at that scheduled hearing date from any party wishing to testify at that time after notifying those present of the continuance." Based on those two provisions in CCC 18.172.081(16)(a)

(i). our understanding is that the Planning Commission is obliged to open the currently scheduled hearing tomorrow night, allow any members of the public to testify, and then continue that hearing to a date certain at which time we expect that Ms. Macbeth and Ms. MacLeod will be more prepared to participate.

The Applicants request that the hearing be continued to the earliest possible date that allows for courtesy notice to be provided to both Ms. Macbeth (on behalf of COI,W) and Ms. MacLeod 20 days prior to the continued hearing. Please also note that the Applicant intends to postpone offering any testimony in this matter until the continued public hearing. Last, please pass this request on to the Planning Commission and include the correspondence in the record.

Thanks,
-Adam

Adam Smith

Shareholder

Pronouns: he, him, his

D: 541-749-1759

asmith@schwabe.com

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Carol Macbeth (she/her)
Staff Attorney
Central Oregon LandWatch

*On the ceded homelands of the Wasq'u (Wasco)
and Tana'nma (Warm Springs) people*

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11/7/23, 4:47 PM

Mail - Will VanVactor - Outlook

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