

**WALLOWA COUNTY
BOARD of COMMISSIONERS
STATE of OREGON**

541-426-7730
FAX: 541-426-0582
STACEY FREGULIA, E.A.

CHAIRMAN SUSAN ROBERTS
COMMISSIONER TODD NASH
COMMISSIONER PAUL CASTILLEJA

commissioners@co.wallowa.or.us

August 29, 2017

**Wallowa County Board of Commissioners (BOC)
Moholt et al App# 17-02
10:00 a.m. / C.J. Thornton Conference Room
Wallowa County Courthouse**

MEMBERS PRESENT: CHAIR SUSAN ROBERTS
COMMISSIONER PAUL CASTILLEJA
COMMISSIONER TODD NASH

STAFF PRESENT: STACEY FREGULIA, EXECUTIVE ASSISTANT, PAIGE
SULLY, COUNTY COUNSEL

OTHERS PRESENT: REBECCA KNAPP, RICHARD HOBBS, MONICA ENG,
MICHAEL ENG, RON POLK, FRED BROCKMAN

10:06 a.m. – Chair Roberts called the meeting to order stating that this meeting is to hear Wallowa County Board of Commissioners Appeal # 17-02, an appeal of a Wallowa County Planning Commission decision, and filed by Kendrick Moholt, Leon Werdinger, Jeremiah Marsh, and the Friends of the Lostine Wildlife Area. The appellants are appealing the issuance of Zone Permit #13-66 issued to Steven Bilben and Richard Rhodes, applicant on November 27, 2013. The date of the decision of the Planning Commission was June 27, 2017. This appeal is heard pursuant to Wallowa County Land Development Ordinance Section 7.015(3), and will be heard on the record created below only. No new evidence, or argument or authority on additional legal positions, will be entertained by the Board, nor will the record be kept open for the submission of any new material after today's hearing. The Board will hear argument based solely on those facts and legal positions raised below and contained in the record only, related to the decision of the Planning Commission that the appellants do not have standing to appeal as a result of untimeliness. The Board has reviewed the record in its entirety and encourages counsel to briefly summarize their positions only. Chair Roberts then asked the Board members to state for the record any ex parte contact they may have had regarding the substance of this appeal.

Commissioner Castilleja stated he had not had any ex parte contact with anyone about this appeal, Commissioner Nash stated the same and Chair Roberts stated that she also had not had any ex parte contact with anyone about this appeal.

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Chair Roberts stated that Mr. Hobbs had written a letter of objection with corrections for the record. Ms. Fregulia handed out a packet to the interested parties of the material that was specified in the letter. **Paige Sully, County Counsel**, stated that in Mr. Hobbs' objection to the record, number ten should be stricken from the record due to it not being presented in this case by either parties but yet was submitted in a previous case from the Eng and Loftus appeal of the same permit. Since number ten did not go before the Wallowa County Planning Commission it cannot be added to the record. Chair Roberts then turned the floor over to the attendees of the hearing.

Richard Hobbs, attorney for appellants; Kendrick Moholt, Leon Werdinger, Jerimiah Marsh, and the Friends of the Lostine Wildlife, reiterated his client's position on the appeal of Zone Permit #13-66 stated in the record. Mr. Hobbs states that his clients should have standing of timeliness due to the notice never being mailed. Mr. Hobbs states that no one had the opportunity to object back in 2013 when the zone permit was issued because no one knew about it due to it not being noticed and no hearing was held. He urges the Board to acknowledge that truth of failure on having not held a hearing and to start the process of the zone permit over again.

Ms. Rebecca Knapp, attorney for Mr. Steve Bilben, reiterated why the 21 days to appeal should be upheld for the timeliness of the Planning Commission Appeal #17-01 of Zone Permit #13-66. She states that the initial notice for the Eng and Loftus Appeal was properly noticed in the paper and to the appropriate land owners within 750ft. On those dates it would have triggered the 21 day timeline where anyone could appeal because they should have known or did know of the permit. Due to the appeal dates being months past the deadline Ms. Knapp argues that the Board should uphold the Planning Commission's decision.

Chair Roberts noted that the Board has received the record of the proceedings from the Planning Commission's meetings with the corrections that Mr. Hobbs had pointed out in his objection. What the Board is looking at today is what the Planning Commissions' decision was regarding the appeal not being filed timely. The decision that needs made today is not whether they should have been noticed or that it was incorrectly not noticed. Chair Roberts then asked the fellow Commissioners if they have any questions for either attorney on the matter presented today or statements for the record.

Commissioner Nash stated that there were several times that Mr. Hobbs had requested further public hearings and wanted clarification from Mr. Hobbs. Mr. Hobbs clarified that he is requesting that the Zone Permit from 2013 should have a public hearing since it has never been heard by the public or the Planning Commission prior to today. Commissioner Nash then asked if the process that has been done so far in the appeal of the zone permit is not satisfactory to Mr. Hobbs' liking. Mr. Hobbs responded by stating that they have never actually reached the merits of whether or not the zone permit should have ever been issued.

Ms. Knapp responded to Mr. Hobbs' statements saying that the lawfulness of the permit is not relevant on this appeal matter because the rule of timeliness is there to limit the time frame for appeals so that years later future land owners cannot contest the decision. Mr. Hobbs rebuts stating that the courts have looked at the 21 day

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timeline and have addressed it. It was noted that they have ten years to decide whether or not to reverse a zone permit if there was no hearing when one should have been held. Mr. Hobbs states that what needs to be held first is to figure out if there was a need for a public hearing before they can decide whether or not there is a timeliness issue.

Commissioner Castilleja stated that the appeal was not done in the appropriate amount of time.

Commissioner Nash had a question concerning the Friends of the Lostine Wildlife Area. He asked if they were registered with the state and when was the group established. Mr. Hobbs stated that the Friends of the Lostine Wildlife Area was put together in order to file this appeal to protect those who are interested in the Lostine Wildlife Area. It is a public group representing a public interest which in turn requires representation. Mr. Hobbs briefly explained what representational standing is and why that is justifiable in this appeal. Ms. Knapp stated that the issue is not whether the Friends of the Lostine Wildlife Area have standing but rather if they filed a timely appeal. It is stated that if one member of the group or organization has standing then they all have standing. There is at least one member that has known about this before the group was formed and already has an appeal in process at the current moment.

Chair Roberts states that the question is on the timeliness. The timeliness issue is of the record that the Board has and she does not believe that there is enough evidence in the record and with everything that has been presented to the Board that indicates that the appellants filed in a timely matter.

Commissioner Nash moved to uphold the Planning Commissions' decision to deny Appeal 17-01, stating that they did not file their appeal timely.

Commissioner Castilleja seconded the motion.

The vote was unanimous in favor of the motion.

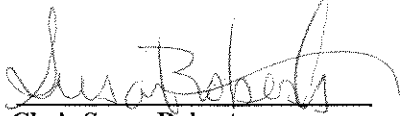
No further business was brought before the Board of Commissioners at this time.

Adjournment: The official meeting ended at approximately 10:49 a.m.

Respectfully Submitted by:
Stacey Fregulia, Executive Assistant

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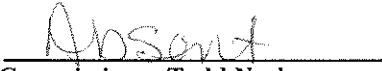
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Chair Susan Roberts



Commissioner Paul Castilleja



Commissioner Todd Nash



ATTEST: Stacey Fregulia, Executive Assistant