**BEFORE THE LAND USE HEARINGS OFFICER**
**OF CLACKAMAS COUNTY, OREGON**

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| Regarding the Revocation of a Conditional Use | ) | **Case File No.** |
| Permit to Operate a Horse Boarding Facility. | ) | **Z0175-14-C** |
| | ) | **(Tudor CUP Revocation)** |

## A. SUMMARY

1. The applicant who obtained the conditional use permit is Amber Tudor.

2. The subject property is located at 16777 South Henrici Road, Oregon City, OR 97045. The legal description is T3S, R2E, Section 14AD, Tax Lot 1000, W.M. The subject property is approximately 4.89 acres and is zoned RR-FF – Rural Residential – Farm Forest – 5 Acre Minimum.

3. On December 17, 2015, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application. The record was left open for three weeks for the submission of new evidence, responses to the new evidence, and the applicant's final legal argument. The revocation proceeding was subsequently suspended to allow the applicant to submit a conditional use modification application.

## B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony at the public hearing about this permit on December 17, 2015. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the notice regarding the revocation hearing, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.

2. At the hearing, county planner Linda Priez discussed the nature of the violations occurring on the property and recommended revocation of the conditional use permit.

3. The owner, Amber Tudor, testified that her contractor, Kiim Stavrum, had handled all the operations and legal aspects of the horse boarding facility and that she was unaware that conditions of approval had not been satisfied.

4. Numerous neighbors testified that various conditions of approval had not been satisfied.

5. At the conclusion of the public hearing, the record was left open for one week for the submission of new evidence, one additional week for responses to the new evidence, and one additional week for the applicant's final legal argument. The applicant's attorney subsequently requested an opportunity to submit an application to modify the conditional use permit. The revocation proceeding was suspended until February 25, 2016 to allow the applicant to file a modification permit and satisfy certain conditions.

## C. DISCUSSION

### 1. Facts

The subject property is located at 16777 South Henrici Road, Oregon City, OR 97045. The owner, Amber Tudor (Tudor), obtained a conditional use permit (CUP) on October 23, 2014 to operate a horse boarding facility on the 4.89-acre RRFF-5 parcel. Among the numerous conditions of approval contained in the original decision approving the CUP were conditions of approval II. (3) & (4), which state:

> "3. Within thirty (30) calendar days from the date of this Final Order, the applicant shall contact the County building and fire officials and determine what permits are required to use the existing barn for commercial purposes (i.e. building, electrical, mechanical, plumbing, fire permits).
>
> "4. Within ninety (90) calendar days from the date of this Final Order, the applicant Shall:
>
> > "a. Submit applications for all permits identified by the County building and fire officials;
> >
> > "b. Demonstrate whether the existing barn complies with the setback requirements of the RRFF-5 zone.
> >
> > "c. Move the manure pile to the east side of the barn so the barn blocks views of the pile from abutting properties east of the site and continuously maintain a tarp, roof or similar cover to prevent rain from reaching the manure

pile; and

"d. Provide evidence of an approved Confined Animal Feeding Operation plan or written evidence from the Oregon Department of Agriculture that this facility is exempt from those regulations." Final Order 17.

The applicant appealed the CUP approval to the Land Use Board of Appeals (LUBA) in order to challenge certain conditions of approval. LUBA affirmed the County's decision on May 8, 2015. *Stavrum v. Clackamas County*, __ Or LUBA ___ 2015 (LUBA No. 2014-101). Therefore, pursuant to the original CUP approval, Tudor had 30 and 90 days respectively from May 8, 2015 to satisfy the quoted conditions of approval.

**2. Analysis**

The county initiated revocation proceedings due to complaints from neighbors that Tudor had not completed any of the required conditions of approval. Numerous neighbors testified at the public hearing that Tudor had completely failed to abide by many of the required conditions of approval. Tudor did not dispute that she had failed to complete the required conditions of approval. Instead, Tudor argued that her contractor, Kiim Stavrum (Stavrum), had been in charge of all the legal matters, including the LUBA appeal. According to Tudor, she was completely unaware of any of the required conditions of approval until the public hearing regarding the potential revocation of her CUP.[1]

At the conclusion of the public hearing, the record was left open for three weeks for the submission of new evidence, responses to the new evidence, and Tudor's final legal argument. During the open record period, Tudor retained an attorney who requested that Tudor be allowed to submit a CUP modification application to remedy the violations. The County agreed with Tudor that she should be allowed to submit a CUP modification application. In a letter dated January 26, 2016, I suspended the revocation proceedings to allow Tudor to submit a CUP modification application as long as three conditions were met:

"(1) The applicant must submit a complete 'Modification' application

[1] Tudor testified that she never received the notice from the County regarding the failure to satisfy the conditions of approval and the scheduled revocation hearing.

requesting modification of conditions number II-3 and II-4 and identify a reasonable time, not to exceed 45 days from the date of this letter to either comply with those conditions or discontinue operation of the horse boarding facility until such time as the necessary permits are applied for, approved, and the improvements are fully completed, inspected, and approved by the County.

"(2) The applicant provides information demonstrating that the setback issue can be resolved by either submitting a completed property line adjustment application to modify the adjacent property line to meet the 10 foot setback and/or provide revised building plans completed by a licensed engineer demonstrating the building can be modified to meet the 10 foot minimum setback and a statement from the property owner agreeing to modify the building in a timely fashion.

"(3) Demonstrate that all conditions related to storage and removal of manure are met within 7 days of the date of this letter."

Despite Tudor's absolute disregard for the required conditions of approval in the original CUP and her dubious at best protestations of ignorance, she was given the opportunity to remedy the situation. Again, Tudor has completely failed to perform any of the reasonable conditions required to preserve her CUP. As the County explains, "[a]s of this date [March 7, 2016 – well past the February 25, 2016 deadline], the applicant Amber Tudor has not responded or submitted any information in response to these issues, Accordingly, the County staff recommends the hearings officer revoke the conditional use permit."

Tudor was required by the terms of the original CUP permit to satisfy the conditions of approval II. (3) and II. (4) 30 and 90 days respectively from May 8, 2015. Those conditions of approval have not been satisfied. Furthermore, Tudor was required to satisfy three conditions of approval pursuant to the revocation hearing. Those conditions have not been satisfied. Tudor has completely failed to take advantage of the numerous opportunities provided to her by the County to remedy her failures to satisfy the required conditions of approval while her neighbors suffered from her failures.[2] Tudor's CUP is

[22] While acknowledging that Tudor had failed to comply with the required conditions of approval, Tudor's attorney stated that Tudor would waive further appearance in this matter if given the opportunity to pursue a CUP modification. While Tudor's attorney's statement is not necessary to establish that Tudor is in violation of her CUP, it further illustrates that Tudor has failed to take advantage of the numerous opportunities extended to her.

hereby revoked.

## D. DECISION

Based on the findings, discussion, and conclusions provided or incorporated herein and the public record in this case, the Hearings Officer hereby **REVOKES** the conditional use permit approved in Z0175-14-C.

DATED this 22th day of March, 2016.

Fred Wilson
Clackamas County Hearings Officer

## ENDANGERED SPECIES ACT NOTICE

The federal Endangered Species Act (ESA) is not a criterion for approval of this application. The County has reviewed the approval standards in light of the requirements of the ESA, believes that the criteria for approval are consistent with the terms of the ESA and has submitted the Development Ordinances for consideration for a "4(d)" programmatic limitation. However, the analysis included in this decision does not include an evaluation by the County of the applications for consistency with the ESA nor does the decision reach any conclusions concerning that federal law. The applicant are responsible for designing, constructing, operating and maintaining the activities allowed by an approval of this application in a manner that ensures compliance with the ESA. Any question concerning this issue should be directed to the applicant, their consultants and the federal agencies responsible for administration and enforcement of the ESA for the affected species.

## APPEAL RIGHTS

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be

commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision will be "final" for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).