

LUBA Case Summaries June 2024

Note: This information is compiled and made available to the public by the Land Use Board of Appeals (LUBA). These case summaries are provided for public informational use only. These case summaries are not considered part of the Board's opinion and should not be cited as legal authority. Summarized decisions may be subject to judicial review, which may result in all or part of the LUBA decision being invalidated.

The full text of LUBA's Final Opinions can be found at <https://www.oregon.gov/luba/Pages/Final-Opinions.aspx>. LUBA generally posts copies of its decisions online weekly. LUBA generally posts case summaries online monthly.

● ***Winters v. Tillamook County* (LUBA No 2023-027/028/029, June 7, 2024)**
(Opinion by Ryan, Board Chair)

On remand from the Court of Appeals. Petitioners appealed three separate emails from a county permit technician that rejected three separate applications for new short-term rental permits. In its original decision, LUBA dismissed the appeals because LUBA determined that petitioners failed to respond to the county's argument that the emails were not final decisions as required by ORS 197.015(10)(a). In a nonprecedential memorandum opinion, the Court of Appeals reversed and remanded LUBA's decision, holding that LUBA erred in determining that petitioners had not demonstrated that the emails were final decisions. Held: Petitioners requested that this appeal be dismissed. Dismissed.

● ***Toschi v. City of St. Helens* (LUBA No 2023-085, June 11, 2024)**
(Opinion by Ryan, Board Chair)

Petitioners appealed a city council decision approving a conditional use permit, sensitive lands permits, and a sign permit for a new police station. Respondent withdrew the challenged decision for reconsideration pursuant to ORS 197.830(13)(b) and OAR 661-010-0021. Thereafter, respondent filed the decision on reconsideration with LUBA. Held: Petitioners did not refile the original notice of intent to appeal or file an amended notice of intent to appeal within 21 days after LUBA's receipt of the decision on reconsideration, in accordance with OAR 661-010-0021(5)(a). The appeal is dismissed in accordance with OAR 661-010-0021(5)(e). Dismissed.

● ***Windlinx Ranch Trust v. Deschutes County* (LUBA No 2024-010, June 24, 2024)**
(Opinion by Ryan, Board Chair)

Petitioner appealed a hearings officer declaratory ruling concluding that certain property is zoned Rural Residential (RR-10). Held: The hearings officer made inadequate findings with respect to petitioner's argument that the doctrine of collateral attack precluded the hearings officer from determining in a declaratory ruling that the zoning of the property is RR-10, where a prior final and unappealed decision concluded that the property was zoned Forest Use (F-2). Issue preclusion did not prevent the hearings officer from considering the property's zoning in making the challenged decision. The hearings officer correctly construed the county code in concluding

LUBA Case Summaries
June 2024

that the county zoning map showed the property as being within the RR-10 zone, and in concluding that the project is a “Class III road or street project.” Remanded.

● ***Friends of Yamhill County v. Yamhill County* (LUBA No 2024-008, June 25, 2024)**
(Opinion by Zamudio, Board Member)

Petitioner appealed a board of commissioners’ decision approving a conditional use permit (CUP) for the operation of a commercial activity in conjunction with farm use to allow the sale of wine, beer, other malt beverages, and cider at an existing farm stand on land zoned for exclusive farm use. Held: Commercial activity in conjunction with farm use, as used in ORS 215.283(2)(a), does not require that the commercial activity have a nexus with the farm use on the subject property. The language in Yamhill County Zoning Ordinance 402.10(B)(2) that “[r]etail sales and promotion of agricultural products, supplies and services directly related to the production, harvesting, and processing of agricultural products[,]” does not restrict the agricultural products to only raw agricultural products and therefore allows for the sale of processed agricultural products. Where the parties agree that the commercial activity must be subordinate and secondary to a primary farm use, the county erred by failing to adopt findings or conditions supporting the county’s conclusion that only a small amount or a low-volume commercial use will occur. A conditional commercial use approved under ORS 215.283(2)(a) is distinct from, and not limited by, the approval for the existing farm stand under ORS 215.283(1)(n). Remanded.

● ***Friends of Yamhill County v. Yamhill County* (LUBA No 2024-009, June 25, 2024)**
(Opinion by Zamudio, Board Member)

Petitioner appealed a board of commissioners’ decision approving a conditional use permit for the operation of a commercial activity in conjunction with farm use to allow the sale of wine, beer, other malt beverages, and cider at an existing farm stand on land zoned for exclusive farm use. Held: This appeal concerned a substantially similar decision with similar facts and legal issues as *Friends of Yamhill County v. Yamhill County*, ___ Or LUBA ___ (LUBA No 2024-008, June 25, 2024). The decision is remanded for the reasons expressed in that opinion. Remanded.

[End of Document]