

Tony Aceti  
21235 Tumalo Place  
Bend, OR 97701

RECEIVED

NOV 30 2015

Deschutes County Board of Commissioners  
1300 Wall Street  
Bend, OR. 97701

Deschutes County CDD

Re: Aceti 247-14-000456-ZC, 247-14-000457-PA; for the Record. Nov. 29th, 2015.

Dear Deschutes County Board of Commissioners,

In addition to a formal rebuttal from my consultants and because I was personally attacked by Central Oregon Land Watch last week, I am providing information, letters, my notes from the last week's Hearing and a complete Bend Bulletin article dated 7-20-1998 for your consideration..

**First;** I chose an outstanding team of well-known and highly qualified professionals to prepare the application, burden of proof, soils report, and traffic study. Pat Kliewer, Roger Borine and Gary Judd are incredibly thorough, factual and detailed. None are at the beginning of their careers, in contrast to COLW's attorney who recently graduated and has not yet passed the bar. Other people who provided oral and written testimony before the hearings officer in support of the application have the utmost ethical standards. They have previously owned my parcels or have decades of practical experience farming here and knowledge of my property and properties in the vicinity. Their words mean something. I too, conduct my life to reflect these values. I expect others in this land use arena, to conduct themselves in the same honest, professional manner as my team does. Most of the time, personal attacks are not allowed in testimony. I was shocked to be attacked.

Central Oregon Land Watch (COLW) opposes my Application with misinformation and unearned arrogance. Roger Borine is an expert soil scientist and COLW needs to be educated. My property has a long list of major events that have happened to it in the twenty years since I bought it in 1995 for a regional hay distribution business. All of the deeds and easements filed with the county clerk since 1997 are included in the Application in the Change of Circumstances and Exhibits sections. The resulting significant changes to irrigation that resulted in my giving up some of the water rights, having no easement to deliver water to the land, and the other difficulties in irrigating the oddly shaped small portions of land around the overpass were also provided to the hearings officer. For COLW to firmly state that nothing has changed since 1995 is fantasy. The Application includes at least 50 changes. COLW knows nearly nothing about my property, the area, Goal 14, Goal 3, farming or about soils, other than its zoning and location, yet it portrays itself to be an expert in all of those things. But, to personally demoralize me and to present misinformation as facts and to cherry pick words, statements and articles and pose them to the Deschutes County Commissioners as whole truths is not acceptable to me or the public. I hope it is not acceptable to you, either. COLW did submit a similar packet of information prior to the public hearing last summer, but did not attend the hearing. The Hearings Officer found that the submittals were not in keeping with the facts presented by the Applicant, experts and others, were not accurate and were not convincing.

**Secondly;** My life work has been around hay and cattle. I do custom hay production for others, and buy and sell hay, including weed free hay that meets the exacting standards of the Asian market. I am considered an expert and intimately understand the entire process of land preparation, harvesting, raising, and sales of this agribusiness, more than an attorney from COLW ever will. I attempted to raise hay the first year of my ownership on this parcel to comply with the requirement to grow some hay on site along with hay that I and others grow on other parcels in the tri-county region to meet the requirements of a C.U.P. to distribute hay. I found that this property was not viable farm land and I expended more money and resources than the crop was worth. In the second year of ownership, I had to get legal help to understanding the process and protecting my rights as ODOT and the County acquired over two and a half acres of my land for realigning roads and building an overpass across it. I had just gotten a permit to build a second barn, and it was in the same location as the proposed overpass. To say that I was overwhelmed at the time is an understatement. The next year the overpass project commenced and my land was changed forever.

I began attending planning division open houses, planning commission and BOCC meetings to learn about what was happening. After 18 years of trying to figure out what I could do with my radically changed parcel, dealing with zoning, regional planning, transportation plans, land use, I attended, participated in, testified and studied state and county land use requirements on this topic. I realized that this land should not be zoned EFU and it was best to rezone my property. I was confident that the land and location met all of the criteria. My efforts helped to acknowledge the need to establish Polices for Deschutes Junction and shed light on Master Planning.

The Hearings Officer decided that my application meets the criteria for a Zone Change and Plan Amendment to the County's Comprehensive Plan.

If I were a County Commissioner, the only questions would be, "Do I agree with the Hearings Officer's detailed findings? Did she do a good job? Has the criteria been met? Will replacing the EFU zone have significant adverse effects on sparse, small farms that are over a half mile away? Will the new RI zone be compatible with surrounding RI, MUA-10 and RC uses?"

As Jack Holt pointed out, COLW is so presumptuous that it is beyond belief that they think that they know more than Roger Borine or I do about soils and farming, that they assume I grew all the hay in my 23,000 square foot barn on site when I am a custom hay farmer and a hay broker, or that the Barrett's irrigation pipes are mine, when they are not. The fact that irrigation easements do not exist.

All of us involved in my case are shocked by COLW's behavior and I hope you will let them know the county has higher standards than personal attacks and arrogant assumptions by ignoring their irrelevant and ridiculous testimony.

Thank you for your service,



Tony Aceti

Please find the attached materials: (1) Memorandum of Meeting, 1996. (2) Letter to BOCC, 1997. (3) Bend Bulletin article, 1998. (4) Tony's Hearing Notes, 11-23-15. (5) Google Earth map with irrigation information with pins.

(1)

**MEMORANDUM OF MEETING****PROJECT:** Deschutes Market Road Interchange**DATE:** May 29, 1996**NOTES BY:** Sharon R. Smith**PRESENT:** (Deschutes County Dept. Of Public Works)

Larry Rice

Dick Johnson

(Cascade Pumice, Inc.)

Richard Pearsall, President

(Bryant Lovlien &amp; Jarvis, P.C.)

Sharon R. Smith

Dale Van Valkenburg

The above Parties met to discuss the potential conflict of interest if the Law Firm of Bryant Lovlien & Jarvis represents the Public Works Department in its Land Use Application for the siting of the Deschutes Market Road Interchange. The Parties acknowledge that the Firm of Bryant Lovlien & Jarvis has represented the Public Works Department on land use matters and has also represented Cascade Pumice with respect to land use matters and specifically, land use matters involved in the Deschutes Market Road Interchange. The Parties met to discuss potential conflicts of interest to see whether both Parties would consent to the Firm's representation of Public Works in that Land Use Application. The Parties outlined the potential conflicts of interest and concluded that no actual conflict exists because there is agreement on the following points:

1. The Public Works Department will be proposing a two-phase construction of the Interchange. Phase 1 includes the Land Use Approval for the entire Interchange, the acquisition of Right-of-Way for the first phase and construction of the first phase. The second phase will be the construction of the second phase of the Interchange, which includes a Railroad overcrossing and the acquisition of the Right-of-Way for that crossing. Both Phases of the Interchange will cross properties owned by Cascade Pumice. Cascade Pumice and the Public Works Department prefer the overcrossing of the Railroad option.

- 2. Due to the location of the second phase of the Interchange, the office and scales of Cascade Pumice will be impacted. Cascade Pumice shall negotiate with the State of Oregon over the amounts of such impact. In addition, benefits for relocation will be determined.
- 3. Cascade Pumice requires access on to the southern part of its property off of the frontage road, adjacent to the canal. The road shall be an extension of the "T" intersection. The Parties realize that this will be above grade. Public Works shall proposed that the access road be constructed at the time of the Phase 1 construction.

Public Works shall propose that Cascade Pumice shall have access to the East and West off the canal frontage road in a location to be determined by Public Works. This shall be included in Phase 1 construction.

- 4. Public Works shall propose in the Land Use Application that when Phase 2 is constructed, a tunnel shall be provided underneath the overpass, on Cascade Pumice property 30 feet wide and 15 feet tall.
- 5. Public Works agrees to support Cascade Pumice's future application for a rezone of the EFU portion of its property. Public Works will support the application based on Cascade Pumice's support in this Interchange Project, the fact that the Project took a substantial amount of Cascade Pumice's Rural Industrial land, and that the transportation system is adequate to support the rezone.
- 6. Public Works shall propose and support a security fence, to their design specification, be constructed at the edge of the Right-of-Way along the section of roads constructed on current Cascade Pumice properties.
- 7. Public Works shall propose utility conduits under the various sections of the Overpasses in locations needed to serve Cascade Pumice's properties. The conduit shall be suitable for water, power, electrical, and phone lines.
- 8. Cascade Pumice has an Access Easement onto Highway 97. Public Works shall seek approval of construction of that access way as part of the Phase 1 construction.
- 9. If the Right-of-Way for the second phase of construction is acquired prior to the actual construction, Cascade Pumice shall request in the acquisition the right to utilize the property without compensation until such time as the construction occurs. Public Works shall support that request because the use of that property is not necessary until the construction of Phase 2.

*How much did this cost? 1 million bucks!*

Because the Parties are in agreement with respect to all of the items listed above, the Parties believe ~~that they are in agreement~~ and consent to Bryant Lovlien & Jarvis representing the Public Works Department in the Land Use Application for the approval of the Deschutes Market Interchange. Bryant Lovlien & Jarvis will continue to represent Cascade Pumice with respect to other matters, including land use matters and the Right-of-Way acquisition for the Interchange to be conducted by the State of Oregon Department of Transportation.

THE FIRM RECOMMENDS THAT YOU SEEK INDEPENDENT LEGAL, ADVICE TO DETERMINE IF YOU SHOULD SIGN THIS AGREEMENT AND THEREBY GIVE YOUR CONSENT TO THE FIRM'S REPRESENTATION OF THE PARTIES.

BRYANT LOVLIE & JARVIS, P.C.

Sharon R. Smith  
By: SHARON R. SMITH

Date: \_\_\_\_\_

DESCHUTES COUNTY PUBLIC WORKS DEPARTMENT

Larry Rice  
By: LARRY RICE, Director

Date: 6-5-96

CASCADE PUMICE, INC

Richard O. Pearsall  
By: RICHARD PEARSALL, President

Date: 6-7-96

(2)

April 30, 1997

NANCY SCHLANGEN  
ROBERT NIPPER  
LINDA SWEARINGEN

Deschutes County Commissioners:

I am a farmer. I make my living growing and selling hay. You understand it is my duty to protect my property rights. Finally, important issues were addressed at the press conference.

I have no desire to hold up a project that is important to all the people who must use the intersection at Highway 97 and Deschutes Junction. I am, therefore, willing to sign the agreement you have prepared. It is signed and is enclosed.

I have negotiated a settlement with you which I believe is fair. Unfortunately, what you have agreed to, ODOT wants to take away. I intend to defend what has fairly and in good faith been negotiated.

I trust you will sign the agreement so that the people can have their intersection in a timely manner. It is for them. It is for their safety.

If you do not intend to sign your agreement, I must know immediately. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Tony Aceti". The signature is written in a cursive, flowing style with a large loop at the end.

TONY ACETI  
cell phone: 419-0858

(3)

# Aceti land-use dispute settled

## Agreement reached on farmland taken for road interchange.

By Barney Lerten  
The Bulletin

A strong push by a Deschutes County commissioner and mediation with a retired judge have resolved a condemnation dispute between the Oregon Department of Transportation and Deschutes Junction hay grower Tony Aceti.

"I'm calling it a victory, in that I stood up for what was right," said

Aceti, who signed the settlement papers this week.

Aceti accepted a payment from ODOT of \$54,000, along with the county's addition of a center turn lane on the land bisecting his property.

That will improve access to land Aceti said remains unfarmable.

ODOT also agreed to shorten its fencing onto Aceti's property and that gates may be moved closer to the road. The county, meanwhile, agreed to provide 1.3 acres on the western edge of Aceti's property, at the new intersection with Tumalo Road.

Even before the final details were hammered out, Aceti took down several large signs he had tacked to hay bales atop trucks, proclaiming his fight to protect private property rights.

The dispute focused on 2½ of the 23 acres Aceti bought for \$186,000 near the dangerous intersection, where the state is constructing a \$2.7 million overpass, due for completion by late fall.

The state filed a condemnation lawsuit for the land last fall after Aceti refused an ODOT offer of \$30,000 for the 2½ acres.

See DISPUTE, Page A2

# Dispute: Settlement avoids court

Continued from Page A1

Aceti said he had an appraisal showing the land was worth more than three times the amount.

With a trial date pushed back until fall, the parties sat down with retired Judge John Copenhaver to try to resolve the matter. But Aceti credited county commissioner Linda Swearingen with making the settlement happen.

"I would have gone to trial, if it weren't for Linda Swearingen," said Aceti, who called the mediation session "a big waste of time."

"If there had been more communication from the very beginning, this thing would have been settled a long time ago, and at a lot less cost to the taxpayer," Aceti said.

Swearingen agreed: "There are things we all could have done differently."

"What got us into trouble was, public safety was our No. 1 concern, so we didn't have the time to work out the details with Mr. Aceti

before the project began," Swearingen said.

She said the land the county gave to Aceti originally was bought by ODOT and would have been available to the adjoining property owner anyway, since it is so small as to be unbuildable.

The turn lane will cost \$15,000 to \$23,000, but Aceti won't own it — and Swearingen noted that Aceti provided property to the north for the new Tumalo Road alignment.

Swearingen also got much of the credit from Al Depenbrock, an assistant attorney general who helped craft the agreement.

"Linda was the one who had the credibility with Mr. Aceti to put it together," he said.

"She saw advantages to get it resolved and really held people at the table."

Depenbrock noted that 92 percent of all right-of-way claims are settled without any court case be-

ing filed, and only 1 percent ever go to trial.

"It's not a victory, it's not a loss," he said. "There were various appraisals (of Aceti's land) that were way apart."

Earlier this year, Swearingen helped fashion an agreement that resolved another long-standing land use dispute with Blue Spruce Motel owner Frank Franklin. She hopes some other pending cases can be resolved as well.

"What frustrates me about these cases is, the only person who has ever won is the attorneys — not the public and not the private property owner," she said.

"I hope every elected and appointed official would treat people how you would like to be treated," Swearingen said. "Too often, we get so caught up in the vision and the mission that we forget. It might hurt to hear it, but now and then, we need the Tony Acetis to keep us honest."

**Bend-area paving this week**

**Week of July 20 through 24**

7/20/1998

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# (4) Tony's Hearing Notes 11-23-15

- Total RI Zoned Land in Deschutes County..... = 121.9 Acres
- Less City of LaPine & U.S. Military RI Land..... = 48.1 Acres
- Privet ownership RI Zoned Land in the County..... = 73.8 Acres
- Deschutes Junction Holds 81.84% of all of the County's RI zoning
- All Privately owned RI Land is Occupied as of November 1st, 2015

1. Owned for 20 years... Over pass constructed 18 years ago
2. SOILS MAP... from Section 14
3. I know the land well.. Poor, shallow and ROCKY... Unfit for livestock.
4. Irrigation System/Pond, Devastated by Hwy. Improvements Leaving inefficient/difficult for irrigation and odd shaped land for cultivating.
5. Also Constrained by the Transportation System, Because of increased Traffic... Fence Damage... NOISE and Vandalism !
6. SUROUNDED by non-Farm uses...
7. FIGURE 23... Email from Tim Burg Feb. 9th,2015
8. Tim Burg's Email... RI Lands... BEST Location for RI land... 82% RI @DJ... NONE Available... Would be a Benefit to the Community.

## 9. Letters in the Record... Carl Juhl story :)

- Changes be of circumstances Over Pass / Irrevocably Committed
- How Much Money Do you Put into This Land ~~to~~ for a profit?

• Hearings Officer approved!

- Best Placed to Add Needed RI 82%

(5)

Google Earth

File Edit View Tools Add Help



(5)

Google Earth

File Edit View Tools Add Help



(5)

Google Earth

File Edit View Tools Add Help



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December 1, 2015

Deschutes County Commissioners  
117 Lafayette Avenue  
Bend, OR 97701

Re: Aceti : 247-14-000456-ZC, 247-14-000457-PA

This letter provides rebuttal to submittals, including written testimony from Central Oregon Land Watch (COLW), regarding the Aceti land use application. In particular, this letter addresses issues raised by COLW regarding the *Agricultural Soil Capability Assessment* (Soils Report) dated May 8, 2012 that I completed. I submit this letter on behalf of Tony Aceti; however, the conclusions in this letter represent my best professional judgment and scientific evaluation of the issues addressed. My education and experience that qualifies me to conduct this assessment and response follows:

**I. Background and Experience for Roger Borine**

- B.S., Soil Science; Oregon State University, Corvallis, Oregon (1973)
- Soil Science Institute; Iowa State University, Ames, Iowa (1984)
- Certifications: *Certified Professional Soil Classifier (#24918)*, *Certified Professional Soil Scientist (#24918)*, *Professional Wetland Scientist (#1707)*

*USDA NRCS-Oregon (30 yrs):*

- A Soil Scientist for 23 years followed by 7 years as the State Habitat Biologist.
- Experience includes identification, inventory and mapping of soils throughout Oregon. I was the primary author of Josephine, Jackson and Sherman County soil surveys.
- Served on two working groups that developed the Arid West and Western Mountains, Valleys, and Coast regional supplements to the ACOE 1987 Wetlands Delineation Manual.
- NRCS National Instructor for Remote Sensing-Aerial Photography.

*Sage West, LLC (2007-present):*

- Natural resource consulting for soil survey, soil interpretations, wetlands, wildlife habitat and natural resource planning.
- Personally completed over sixty on-site soil assessments and twenty wetland determinations throughout eastern Oregon.

**II. Agricultural Land**

The *Agricultural Soil Capability Assessment* (Soils Report) dated May 8, 2012 is part of the record. It concludes:

*"The inventory and analysis of this parcel in T16S, R12E, Section 26 tax lot 201 and Section 27 tax lot 104 determined that approximately 80% (17.2 acres) is Land Capability Class 7 and 8 soils; and 20% (4.3 acres) is Land Capability Class 3-6 soils. The parcel as defined is not predominantly Agricultural Land.*

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*Further, together with the LCC soil ratings as non-agricultural soils, the determination of suitability for farm use is "generally unsuitable" for the production of farm crops, livestock or merchantable tree species based upon low fertility, limited soil depth for cultivation and ability to store and hold water, lack of forage production for livestock grazing, limited length of growing season and high levels of energy input with limited outcome."*

This soils assessment was conducted using the USDA National Cooperative Soil Survey policies and procedures that include guidance from the *National Soil Survey Handbook*, *Soil Survey Manual*, *Upper Deschutes River Area Soil Survey*, and *Web Soil Survey*.

The Soils Report provides and documents more detailed data on the extent of agricultural land as defined in Oregon Administrative Rules (OAR) 660-033 *Agricultural Land* for this parcel. This more intensive soil investigation and interpretation must stand on its own merit. DLCD's review deemed it complete and did not select it for further review or evaluation by a contracted Soils Professional based on the Departments criteria and past performance of Sage West, LLC. (OAR 660-033-0045(6)(a)).

COLW states that the Soils Report cannot challenge the NRCS soil capability classification on the property because the Soil Report did not establish that NRCS data for the site are inaccurate.

Response: The following is from the Soils Report that states on page 3, paragraph 2 and justifies the reasoning for conducting an Order 1 soil survey to more accurately define soils on this parcel.

"...The NRCS soil survey (Order 2 and 3) at the landscape level was reviewed and determined to be predominantly accurate. The soil/landscape relationships were accurate. Soil boundary placements were general. At this Order 2 and 3 level of mapping, miscellaneous land types were not mapped or identified as inclusions. In addition, original placement of soil boundary lines by field soil scientists on aerial photos are often modified and straightened during the map digitizing process.

The three NRCS soil mapping units occurring in this study area were reviewed at the landscape level throughout their extent. All have contrasting inclusions listed in their map unit descriptions that may exceed the size of this study area. The initial on-site inventory showed a high percentage of contrasting shallow soils and miscellaneous areas in the *36A-Deskamp loamy sand, 0-3% slopes* map unit. This map unit is approximately 76% of the study area. If this area is predominately shallow and very shallow soils and miscellaneous areas the study area may be predominantly non-agricultural soils.

Soil Surveys seldom contain detailed site specific information and are not designed to be used as primary regulatory tools in permitting or siting decisions, but may be used as reference sources. NRCS maps soils at the landscape level. Land use issues in Oregon are addressed by tax lots. Consequently, NRCS soil maps may be perfectly correct at the landscape level while a tax lot may be in part or entirely a contrasting inclusion."

COLW states all soils on these parcels are agricultural lands and none are Land Capability Class (LCC) 7 or 8.

Response: COLW references soils data that is outside DLCD stated policy (660-033-0030) that requires more detailed soils data be related to the NRCS land capability classification system and the more detailed soils information must be from the Web Soil Survey.

**COLW's Attachment 5** is the *Upper Deschutes Hydrologic Unit Profile* and states in its disclaimer: "All data is provided "as is." There are no warranties, express or implied, including the warranty of fitness for a particular purpose, accompanying this document. Use for general purposes only." Attachment 5 data was not derived from the Web Soil Survey nor intended for detailed land use planning purposes.

**COLW's Figures 8 and 9** from the Web Soil Survey shows "Warning: Soil Ratings may not be valid at this scale." Figures 8 and 9 are from the Web Soil Survey but scaled to a level that makes it less accurate than was intended at the scale of field mapping.

COLW inaccurately interprets and portrays soils information in a manner that deems it questionable. This manipulation of soils information further validates the need for a sound and scientifically based soils assessment designed for regulatory purposes as is in the Aceti Soils Report.

### III. Suitability for Farm Use

COLW argues soil fertility on pages 5-7 without addressing the topic of soil fertility as it relates to suitability.

Response: The Soils Report addresses soil fertility on page 6 and states:

*"Two soil samples, from data plots #10 and #42, were collected and analyzed by Agri-Check, Inc.*

*Organic matter for these sites is extremely low to non-measurable and clay content is less than five percent, resulting in a very low Cation Exchange Capacity (CEC); the higher the CEC the better. The CEC is important because it provides a reservoir of nutrients for plant uptake. Both sample sites have low levels of nitrogen, phosphorus, potassium, and sulfur. High levels of fertilization are required for a grass crop to be produced. Without an ability of the soil to attract and absorb nutrients (low CEC) they are readily leached out of the soil by irrigation and precipitation thus becoming unavailable for plant use and lost into the surface and ground water. Presently, the pH (acidity/basicity) of soils is adequate, but soils with a low CEC can quickly be reduced by additions of nitrogen and sulfur fertilizers, also making nutrients unavailable to plants.*

*To maintain a minimum level of essential nutrients for proper crop growth continual applications of very high rates of fertilizer and soil amendments are required. Without these yearly inputs, soils are non-productive and infertile."*

COLW argues Suitability for Grazing on page 7 without providing any evidence that there is grazing or the potential for grazing by livestock.

Response: The Soils Report addresses suitability for grazing on page 6 and states:

“Landscape and soil characteristics determine the suitability for grazing livestock. Limitations that are recognized on this site include the cold climate and soil temperatures that delay growth of forage and shorten the growing season; reestablishment of the native vegetation is likely impossible due to the pumice ash surface layer and past land alterations; restricted depth limits seeding only to drought tolerant species, and rock outcrop limits the areas suitable for grazing.”

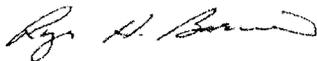
COLW provides no argument on the Soils Report regarding *Technological and Energy Inputs required and accepted farming practices* and is provided to further support a determination of “unsuitability for farm use”.

“Accepted farming practices in central Oregon to raise forage crops generally require and include a relatively flat to gently sloping parcel that has a moderately deep soil with readily available irrigation water in adequate amounts. Irrigation begins in April and ends in October. The site will produce 2 to 3 cuttings of hay or continuous rotational grazing by livestock. Fertilization is required to sustain the plants and produce a high quality crop.

This parcel requires technology and energy inputs over and above that considered acceptable farming practices in this region. Excessive fertilization and soil amendments; very frequent irrigation applications pumped from a pond with limited availability; and marginal climatic conditions restrict cropping alternatives.”

Please accept my responses to the COLW comments. As always, if there are any questions or clarifications needed I will gladly provide.

Regards,



Roger Borine CPSS, CPSC, PWS

## Paul Blikstad

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**From:** Roger Borine <rborine@bendbroadband.com>  
**Sent:** Tuesday, December 01, 2015 8:23 AM  
**To:** Paul Blikstad; Peter Gutowsky  
**Cc:** Tony Aceti; Pat Kliewer  
**Subject:** Aceti-Rebuttal to COLW Comments  
**Attachments:** Aceti\_Rebuttal Soils Report\_Borine.pdf

Paul and Peter,

Please accept my rebuttal to the written comments from Central Oregon Land Watch, dated November 23, 2015 regarding the Aceti application #247-14-000456-ZC and, 247-14-000457-PA.

Thank you,

Roger Borine

*Sage West, LLC  
64770 Melinda Ct  
Bend, OR 97701  
541.610.2457*

28 November 2015

Deschutes County Board of Commissioners  
117 NW Lafayette Avenue  
Bend, OR 97701

Re: File 247-14-00045—ZC; 247-14-000457-PA

Dear Commissioners,

Please accept these comments into your record on the application referenced above. I am not an expert in Land Use law, so these are offered as a layman neighbor who has followed this saga for quite some time. Comments are offered as there has been a Central Oregon Land Watch comment submitted urging you to deny the application.

First, the size of the +/- 22 acre property, makes it not economically viable as a commercial hay growing operation. I have pasture on a 30 acre farm in the immediate area that requires farm acreage equipment, COID water, 3-phase pump, water hand lines, fencing, fertilizer, etc. I pay the bills. I know the costs. Viable commercial operations have moved from small acreages like mine to areas remotely located where economies of scale can be achieved. This has been my home since 1977.

Second, the commercial viability of the Hay Barn property was in purchasing hay, storing it, shipping it and reselling it. Evidence was received by you showing Mr. Aceti sitting on hay bales on his property. If you would like, I could sit on 35 tons of hay bales on my property, all purchased from outside, commercial sources. None was grown on this property. We used to raise our own hay on 40 acres, but could not make it pencil out as costs rose beyond what we could purchase it for from large, commercial operations. In fact, I have purchased hay from the Hay Barn.

The comments submitted by COLW suggest understanding supply/demand and market conditions, but they are complicated by a static view of both. If they are paying \$270 for orchard grass hay and record highs for cattle, a couple of phone calls will save them a bunch of money on today's market. The cycles in agriculture are legendary, and, with 22 acres, fatal economically. Time does not stand still, no matter how hard we try.

Central Oregon soils are marginal at best, particularly with our abbreviated growing season. While the comments by COLW quoting NRCS and the applicant split hairs on the class designation of the soils and how they were taken, the fact of the matter is that it is poor soil. Deschutes County granted an exception for building on my property because of the soil quality. The comments about 100% of the land excluding other soil quality, which were refuted by the applicants' soil study, indicate a macro view contradiction of facts with actual micro studies to the contrary.

Opposition comes from an entity speaking for a 'Special Interest' group. Support comes from neighbors who are familiar with the evolution of the project over many years. This

is, after all, private property. Public ownership of property in Oregon is 55% if memory serves. The buildable property is some 7%. Real estate will eventually be productive for the highest and best use. At this major transportation intersection, the area would be best served by having a rural commercial use. It is convenient and would serve folks most conveniently, perhaps preventing less traffic regionally than it would create. It's 'On the way' to many places and serves as a hub, with many residences in the immediate area. The commercial/industrial uses already existing at the Junction are a testament to what can work commercially, and it is not agriculture.

The neighborhood speaks for itself. Have you driven by the referenced GB Ranch on Highway 97? Do you remember what the field looked like between the highway and the house and out-buildings? A before-and-after picture would tell you how viable the agricultural uses of the property since the often, very often, referenced 1905 would indicate. At one time, it was a classic, alfalfa field, managed by Gerald Barrett and later, Gary. Today, it is an eyesore. What do you think the chances of this generational property becoming commercially, agriculturally viable are? Times have changed.

The water access and easement is something I cannot speak to with personal knowledge. However, it either exists or it doesn't. That is really the answer. To attempt to create a woulda-shoulda business plan for the Hay Barn property after the fact is particularly difficult when you have no investment in the property. Imagining is much easier than actually executing when the facts and personal situation are known.

I, too, am concerned with taxpayers' money ... I am one. However, there is great concern with a taking of private property without making the land owner whole. Was this the best place to put the road, or would the original Deschutes Junction crossing that already existed have been the best? I certainly don't know, but the area chosen required a taking of private property on both sides of Highway 97, with access under the road provided for Aceti, Robinson and BNSF properties. A COID canal also runs under the road. A never-ending area of spending taxpayers' money is found in time, effort and money on endless appeals of land use decisions as well, to say nothing of cost to the private property owner(s).

Cowboy logic is not how you can make your decision. Your Professional Hearings Officer has, however, provided a finding and the information necessary for a reasoned decision. The approval has obviously considered researched information that supports the application. This is most apt to be a supportable decision, rather than that of the applicant or the dissenter. I would urge you approve the application so this dance does not continue simply because there is 'Special Interest' music.

Respectfully submitted for your consideration,

Jack Holt  
21440 Morrill Road; Bend, OR 97701.  
( c ) 541 420-8585