

**BEFORE THE COLUMBIA RIVER GORGE COMMISSION**

In the matter of an appeal of Modified )  
Development Review Decision No. C19-0004 ) **NOTICE OF HEARING**  
by Friends of the Columbia Gorge, Inc. )  
\_\_\_\_\_ )

The Columbia River Gorge Commission will hold a public hearing on February 11, 2020 at 9:00 am at the Bridgeside Restaurant, Sam Hills Den Room (downstairs), 745 NW Wa Na Pa Street, Cascade Locks, Oregon, on an appeal of a Director’s Decision, by Friends of the Columbia Gorge, Inc. The Director’s Decision approved construction of a single-family dwelling on a parcel in Klickitat County.

The Commission derives its jurisdiction over the matter from Section 15(a)(2) of the Columbia River Gorge National Scenic Area Act (16 U.S.C. § 544m(b)(2)), which allows a person adversely affected by any final action or order of a county relating to the implementation of the National Scenic Area Act to appeal to the Commission. Here, where Klickitat County has not adopted a National Scenic Area land use ordinance, the Commission has interpreted Section 15(a)(2) to include appeals of Director’s Decisions. *See* Commission Rule 350-70-010.

Additionally, the Commission has jurisdiction pursuant to Section 8(l) of the National Scenic Area Act (16 U.S.C. § 544f(l)), which requires the Commission to adopt and implement a land use ordinance for special management areas where a county does not do so.

## **PARTIES**

The appellant in this appeal is Friends of the Columbia Gorge, Inc., represented by Gary K. Kahn, Reeves, Kahn, Hennessy & Elkins, Portland, Oregon, and Steven D. McCoy, Staff Attorney, Friends of the Columbia Gorge, Inc., Portland, Oregon.

The applicants, Charles and Valerie Fowler, are appearing without representation. The applicants are automatically parties to the appeal pursuant to Commission Rule 350-70-050(3)(h).

There are no intervenors in this appeal.

## **RECORD ON APPEAL**

The Executive Director has produced a record of her decision-making proceeding, which the parties and the Commission may refer to. The parties may also submit new evidence in their briefs and at the hearing. If a party seeks judicial review of the Commission's action, the Commission will transmit the record of the Executive Director's decision as supplemented by the records of this appeal proceeding to the court in which the appeal is filed. The Commission makes an oral recording of its proceeding (the parties' oral argument and the Commission's deliberation and oral decision) but does not create a transcription. The oral recording is part of the record of the Commission's action and is available to the parties for duplication and transcription.

## **ATTORNEYS**

An attorney may represent any party. It is not necessary, however, that parties have an attorney. Any individual may elect to proceed without an attorney and speak on his or her own behalf. Oregon and Washington law require that attorneys must represent governments and all non-governmental organizations and associations. The Commission's counsel has assisted the

Executive Director in this matter and will not advise the Commission. The Commission will not have independent counsel at the hearing but may ask questions of the parties relating to procedure, and the Commission's counsel may answer the questions on behalf of the Executive Director.

## **ROLE OF PRESIDING OFFICER AND COMMISSION**

The Chair of the Commission will act as presiding officer at the hearing. In the absence of the Chair, the Vice Chair of the Commission will act as presiding officer. The presiding officer will rule on all motions, evidentiary questions, and other similar matters. The presiding officer may, at his or her discretion, refer motions, questions or other similar matters to the full Commission. The Chair of the Commission is Robert Liberty, P.O. Box 730, White Salmon, WA 98672 (509) 493-3323, email: info@gorgecommission.org; the Vice-Chair of the Commission is Rodger Nichols, at the same mailing address, phone number, and email address. All filings should be sent to the Commission office at the above address with copies to other parties as appropriate. No person shall send any materials directly to the presiding officer at any address other than the address listed above.

## **EVIDENCE**

The evidence that the Commission will use in this hearing is contained in the administrative record, admissible evidence submitted as part of the parties' briefs, and admissible evidence submitted at the hearing. Commission Rule 350-70-140(2)(d) states, "The burden of presenting evidence in support of a fact or proposition rests on the proponent of the fact or proposition."

Commission Rule 350-70-140(3), entitled "Evidentiary Rules" specifies the type of evidence that is admissible in this proceeding. Commission Rule 350-70-140(3) states:

(a) Evidence of a type commonly relied upon by a reasonably prudent person in conduct of their serious affairs shall be admissible.

(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) All evidence not objected to, shall be received by the Commission, subject to the Commission's power to exclude irrelevant, immaterial or unduly repetitious matter.

(d) Evidence objected to may be received by the Commission. The Chair of the Commission shall rule on all offers of evidence, including objections to testimony. Rulings on the admissibility of such evidence, if not made at the hearing, shall be made at or before the time a final order is issued.

Commission Rule 350-70-140(2)(f) requires the appellants to mark their exhibits as “Appellant’s Exhibit [n].” All other participants shall mark their exhibits as “[PARTICIPANT’S NAME’S] Exhibit [n].” Any person submitting exhibits shall bring 15 copies of each exhibit for the Commission plus one additional copy for each other party, and one additional copy for the public and commenting persons to review.

When submitting exhibits, please hand all copies of each exhibit to the Commission staff, who will distribute them to the members of the Commission and place the public review copy in an accessible location.

## **HEARING PROCEDURE**

The hearing will be conducted in accordance with Commission Rule 350-70-140(2) as follows:

Approximately two weeks prior to the hearing, members of the Commission will receive a copy of this notice of hearing, the administrative record, the parties’ briefs and a staff report, if any. If the Executive Director prepares a staff report, she will provide a courtesy copy to the parties. There is no opportunity to file a written response to the staff report. Parties may address points in the staff report as part of their oral argument.

At the hearing, the Commission will first take up preliminary matters, including disclosures of conflicts of interest and ex parte contacts, and other issues that may arise.

Next, the Executive Director will briefly summarize the decision on appeal and any recommendation if different from the decision on appeal. The parties and members of the Commission may ask questions of the Executive Director. The Chair of the Commission will limit the Executive Director's time to present the decision on appeal to 15 minutes but may extend that time if the time to answer questions has not allowed the Executive Director to fully present the decision on appeal.

Next, the appellant will present its evidence, including that of any witnesses, and legal argument. Members of the Commission may ask questions of the appellant. The Chair of the Commission will limit the appellant's time to present its evidence and legal argument to 30 minutes but may extend that time if the time to answer questions has not allowed the appellant to fully present its evidence and legal argument.

Next, the applicants will present their evidence, including that of any witnesses, and legal argument. Members of the Commission may ask questions of the applicants. The Chair of the Commission will limit the applicants' time to present their evidence and legal argument to 30 minutes but may extend that time if the time to answer questions has not allowed the applicants to fully present their evidence and legal argument.

After the Executive Director and parties make their presentations, the Commission will take public comment. If many people want to testify, the Chair of the Commission will ask for public comment in the following order: first, any person or entity supporting the appellants; next any person or entity opposing the appellants; and then any person or entity who wishes to offer evidence or testify but neither supports nor opposes the appellants. The Chair of the

Commission will limit public comment to 3 minutes per person. Persons that wish to comment who believe they need substantially more than 3 minutes may request the Chair allow additional time after explaining the need for additional time. The Chair requests persons make such requests in advance of the hearing.

After public comment, the Executive Director may briefly respond to the testimony and evidence presented.

Next, the appellant will be given the opportunity to present rebuttal evidence limited to the specific issues raised by the testimony and evidence presented by the written and oral testimony, including exhibits.

Finally, the applicants will be given the opportunity to present rebuttal evidence limited to the specific issues raised by the testimony and evidence presented by the written and oral testimony, including exhibits.

Any person other than the parties or a member of the Commission who desires to ask a question shall submit that question in writing to the Chair of the Commission, who shall ask the question on behalf of the person. The Chair of the Commission may choose to not ask any question that is repetitious, unduly prejudicial, or unrelated to the testimony and issues raised in the appeal. The Chair of the Commission may also limit the number of questions, including from members of the Commission and the parties to ensure the hearing proceeds on schedule with the Commission's agenda.

After oral argument is completed, the Commission will deliberate to an oral decision. The Commission makes a decision to approve, approve with conditions, or deny the application rather than affirming or reversing the decision of the Executive Director. The Commission may rely on the Director's Decision as the basis for its decision. The presiding officer may at his or

her discretion refer questions during deliberation to the parties and Executive Director, in which case each will have the same amount of time to answer a question. The Chair will limit answers to 2 minutes each. A simple majority of the Commission is required for a decision. The presiding officer participates in all voting. In the event of a tie vote, the presiding officer may request the Commission continue deliberating to reach a majority or conclude that additional deliberation will not break a tie. A tie vote means that a motion does not pass.

### **WRITTEN DECISION**

The presiding officer will issue a written decision within 90 days of the date the Commission makes its oral decision. Typically, the form of the decision is a final order and opinion explaining the conduct of the appeal and the Commission's evidentiary findings and reasoning, and a revised Director's Decision (if applicable). The presiding officer typically asks the Commission staff to draft the order and any revisions to the Director's Decision. There will be only one written decision. Members of the Commission do not issue dissenting or concurring opinions. The full Commission does not hold a hearing to deliberate or vote to adopt the written decision. There is no opportunity for the parties to review any draft written decision.

Any party may appeal a Final Opinion and Order within 60 days after the date of service of the order, as allowed by Section 15(b)(4) of the National Scenic Area Act (16 U.S.C. § 544m(b)(4)).

### **NOTICES**

A party who fails to attend or participate in the hearing may be held in default in accordance with Commission Rule 350-16.

In the event a party is not represented by an attorney, that party may, during the course of the proceedings, request a recess if at any point the party determines that representation by an attorney is necessary to the protection of that party's rights.

DATED this 14th day of January 2020

*s/ Robert Liberty*

Robert Liberty

Chair

Columbia River Gorge Commission

## NOTICE OF MAILING

I certify that on January 14, 2020, I mailed the attached NOTICE OF HEARING by electronic mail to the following persons, all of whom have indicated that they accept email service:

Steven D. McCoy  
Friends of the Columbia Gorge  
Attorney for Appellant Friends of the Columbia Gorge, Inc.  
steve@gorgefriends.org

Gary K. Kahn  
Reeves, Kahn, Hennessy & Elkins  
Attorney for Appellant Friends of the Columbia Gorge, Inc.  
gkahn@rke-law.com

Charles and Valerie Fowler  
Applicants  
cwfsleddog@aol.com  
valerie.c.fowler@gmail.com

*s/ Connie Acker*  
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Connie Acker  
Administrative Analyst