



KELLINGTON  
LAW GROUP, PC

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July 27, 2023

Via Electronic Mail  
Yamhill County Board of Commissioners  
C/O Ken Friday  
Planning Director  
434 NE Evans Street  
McMinnville, OR  
97128

RE: Friends of Yamhill County v. Yamhill County LUBA No 2023-057

Dear Chair Berschauer and Members of the Board of Commissioners:

This firm represents Scott Picker, the applicant for the Agritourism Use Permit that FOYC appealed to LUBA. They will argue at LUBA that the findings are inadequate to meet relevant standards. State statutes and LUBA's rules allow the County to withdraw that decision for reconsideration for the reason that County wishes to consider reapproving and adopting more robust approval findings. You do not need to open the record to reconsider the decision in this way. In fact, we encourage you not to open the record if you agree to withdraw for reconsideration. Rather, the applicant would like to submit proposed supplemental findings of approval for your consideration and adoption in a public meeting. As you may know, the submittal of supplemental findings is not new evidence and is allowed in these circumstances, even where the record is not reopened. *Arlington Heights Homeowners v. City of Portland*, 41 Or LUBA 185, 199-200 (2001) (proposed findings are not "evidence").

Therefore, Mr. Picker hereby formally requests that you withdraw the decision for reconsideration; instruct staff that you do not intend to reopen the record and that you wish staff to work with the applicant to bring back to you more robust findings to consider for reapproval in a public meeting. If you agree, then you must approve this request no later than August 4, 2023 and instruct county counsel to file the attached Notice of Withdrawal for Reconsideration with LUBA that same day (August 4, 2023). Thank you.

Very truly yours,

Wendie L. Kellington

WLK:wlk  
CC: Scott Picker

## Nicole Necas

---

**From:** Jodi Gollehon  
**Sent:** Thursday, July 27, 2023 3:53 PM  
**To:** Carolina Rook; Nicole Necas  
**Cc:** Ken Huffer; Ken Friday; Christian Boenisch; Colton Totland; Lance Woods  
**Subject:** FW: Scott Picker  
**Attachments:** Notice of Withdrawal for Consideration w-footers.docx; Ltr to BOC.pdf

Carolina/Nicole,  
Can you add this to next week's Board agenda? Title will be, "Consideration of a request to withdraw Board's decision for Planning Docket No. E-02-23, Board Order No. 23-247."

Thanks!

Jodi Gollehon  
Assistant County Counsel II  
Yamhill County  
(503) 434-7420

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**From:** Wendie Kellington <wk@klgpc.com>  
**Sent:** Thursday, July 27, 2023 3:49 PM  
**To:** Jodi Gollehon <gollehonj@co.yamhill.or.us>  
**Cc:** Scott Picker <Scott@aspencreeklandscaping.com>; Sarah Mitchell <sm@klgpc.com>; Leanne Olson <lo@klgpc.com>; Ken Friday <fridayk@co.yamhill.or.us>; Colton Totland <totlandc@co.yamhill.or.us>; Christian Boenisch <boenischc@co.yamhill.or.us>  
**Subject:** RE: Scott Picker

**Caution:** This email originated outside of the Yamhill County email system

Hi Jodi,

Thank you. Scott would like to request that the county withdraw the decision that Friends of Yamhill County appealed to LUBA, for reconsideration. A letter to the BOC and a form of Notice of Withdrawal for Reconsideration is attached. Adjust it as you see fit. It is in MS word to make that easy. If you have any questions, please let me know. This is time sensitive as the Notice of Withdrawal for Reconsideration must be filed with LUBA no later than August 4 to be safe. Thank you. All the best, Wendie



**Wendie L. Kellington | Attorney at Law.**

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**From:** Jodi Gollehon <[gollehonj@co.yamhill.or.us](mailto:gollehonj@co.yamhill.or.us)>

**Sent:** Thursday, July 27, 2023 12:23 PM

**To:** Wendie Kellington <[wk@klgpc.com](mailto:wk@klgpc.com)>

**Cc:** Scott Picker <[Scott@aspencreeklandscaping.com](mailto:Scott@aspencreeklandscaping.com)>; Sarah Mitchell <[sm@klgpc.com](mailto:sm@klgpc.com)>; Leanne Olson <[lo@klgpc.com](mailto:lo@klgpc.com)>;

Ken Friday <[fridayk@co.yamhill.or.us](mailto:fridayk@co.yamhill.or.us)>; Colton Totland <[totlandc@co.yamhill.or.us](mailto:totlandc@co.yamhill.or.us)>; Christian Boenisch

<[boenischc@co.yamhill.or.us](mailto:boenischc@co.yamhill.or.us)>

**Subject:** RE: Scott Picker

Wendie,

Thanks for the call. I talked it over with Christian, and we don't have any objection to going through with a withdrawal for reconsideration. Once you have your clients permission, send us something in writing, and we'll get it added to the agenda. It will have to happen at next week's Board meeting, given the record deadline, which shouldn't be an issue. My question for is whether or not you will be able to attend to explain to the Board the reasoning behind the withdrawal? If you can attend (virtually is fine!), that would be fantastic.

Thanks, Wendie – feel free to reach out to Christian while I'm out to work out the logistics. He may request some assistance with drafting up the Board Order and/or agenda item description – we definitely don't want to miss any information that needs to be included.

Thanks,

Jodi Gollehon

Assistant County Counsel II

Yamhill County

(503) 434-7420

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**From:** Wendie Kellington <[wk@klgpc.com](mailto:wk@klgpc.com)>

**Sent:** Thursday, July 27, 2023 9:28 AM

**To:** Jodi Gollehon <[gollehonj@co.yamhill.or.us](mailto:gollehonj@co.yamhill.or.us)>

**Cc:** Scott Picker <[Scott@aspencreeklandscaping.com](mailto:Scott@aspencreeklandscaping.com)>; Sarah Mitchell <[sm@klgpc.com](mailto:sm@klgpc.com)>; Leanne Olson <[lo@klgpc.com](mailto:lo@klgpc.com)>;

Ken Friday <[fridayk@co.yamhill.or.us](mailto:fridayk@co.yamhill.or.us)>; Colton Totland <[totlandc@co.yamhill.or.us](mailto:totlandc@co.yamhill.or.us)>; Christian Boenisch

<[boenischc@co.yamhill.or.us](mailto:boenischc@co.yamhill.or.us)>

**Subject:** RE: Scott Picker

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Jodi,

Thank you. I think it is likely that we will request that the county withdraw the decision for reconsideration. To whom would we direct that request? Also, if the decision is made that withdrawal for reconsideration makes the best sense, then we would want to be safe and be sure that withdrawal for reconsideration (WFR) happened before 21 days after the NITA was filed and served per LUBA's rules which say is the date of mailing reflected on the postmark. The rules are not uber clear for sure, but ORS 661-010-0075(2)(a)(B)(i) says filing happens date of mailing decided by postmark. ORS 661-010-0075(2)(b) says service also happens by 1<sup>st</sup> class mailing. I just worry that "service on the governing body" means service by Petitioner sticking the NITA in a first-class mailer. If at all possible, then, it seems wise to be safe and look at August 4 as the date for any withdrawal for reconsideration (21 days after service per those LUBA rules). Not sure that WFR will be requested, but given time is tight I wanted to throw that out there. Hopefully, this makes sense. Please let me know who we would ask about WFR. Thanks  
Jodi! Best, Wendie

**From:** Jodi Gollehon <[gollehoni@co.yamhill.or.us](mailto:gollehoni@co.yamhill.or.us)>

**Sent:** Thursday, July 27, 2023 9:03 AM

**To:** Wendie Kellington <[wk@klgpc.com](mailto:wk@klgpc.com)>; Ken Friday <[fridayk@co.yamhill.or.us](mailto:fridayk@co.yamhill.or.us)>

**Cc:** Scott Picker <[Scott@aspencreeklandscaping.com](mailto:Scott@aspencreeklandscaping.com)>; Sarah Mitchell <[sm@klgpc.com](mailto:sm@klgpc.com)>; Leanne Olson <[lo@klgpc.com](mailto:lo@klgpc.com)>; Colton Totland <[totlandc@co.yamhill.or.us](mailto:totlandc@co.yamhill.or.us)>; Christian Boenisch <[boenischc@co.yamhill.or.us](mailto:boenischc@co.yamhill.or.us)>

**Subject:** RE: Scott Picker

Hi Wendie. Chiming in to help clarify. Attached are the findings adopted by the Board for Scott's decision – we just used the staff report as our findings, so that may affect how we want to move forward with the appeal. We received service of their NITA on 7/17, so we have until 8/7 to submit the record. I believe that's currently still being put together by our staff, but we'll make sure that a copy is sent to you as well.

From my recollection, the main issue that Friends brought up at the Board hearing was his use of the property for wedding events, but I'm attaching a written comment they submitted that lays their concerns more clearly.

I'm going to be out of the office for the next couple weeks, so I'm cc'ing Christian and Colton Totland from my office so that they can work with you on this in my absence.

Thanks,

Jodi Gollehon  
Assistant County Counsel II  
Yamhill County  
(503) 434-7420

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**From:** Wendie Kellington <[wk@klgpc.com](mailto:wk@klgpc.com)>

**Sent:** Thursday, July 27, 2023 8:24 AM

**To:** Ken Friday <[fridayk@co.yamhill.or.us](mailto:fridayk@co.yamhill.or.us)>

**Cc:** Scott Picker <[Scott@aspencreeklandscaping.com](mailto:Scott@aspencreeklandscaping.com)>; Jodi Gollehon <[gollehoni@co.yamhill.or.us](mailto:gollehoni@co.yamhill.or.us)>; Sarah Mitchell

<[sm@klgpc.com](mailto:sm@klgpc.com)>; Leanne Olson <[lo@klgpc.com](mailto:lo@klgpc.com)>

**Subject:** Scott Picker

**Caution:** This email originated outside of the Yamhill County email system

Hi Ken,

Just left you a message; I hope you are well. We will be representing Scott Picker in the FOYC LUBA appeal and are filing a Motion to Intervene on the side of the County today. I would like to see please, as soon as is possible, the opposition materials submitted in Scott Picker's matter. Would you please send those to me? They are not on the County website and the link at the BOC agenda goes to different matters (footbridge) not Scott's. Also, if you understand what FOYC's gripe is, I would love to understand. One of the possibilities is to ask the County to withdraw the decision for reconsideration in order to beef up (pardon the pun!) the findings if they do not adequately respond to the issues raised by opponents. I would not know that without seeing those materials. There is no reason to go through a LUBA appeal if there are avoidable problems we can fix now, that could otherwise lead to remand. However, as you know, a withdrawal for reconsideration is only possible before the record is filed by the County – which makes this a bit time sensitive, given that the record is due (by my calculations anyway) on August 4. Thanks Ken. All the best, Wendie



**Wendie L. Kellington | Attorney at Law.**

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1                   BEFORE THE LAND USE BOARD OF APPEALS  
2                                   OF THE STATE OF OREGON

3  
4                   FRIENDS OF YAMHILL COUNTY,  
5                                   *Petitioner,*

6  
7                                   vs.

8  
9                   YAMHILL COUNTY,  
10                                  *Respondent,*

11  
12                                  and

13  
14                   SCOTT PICKER,  
15                                  *Intervenor-Respondent.*

16  
17                   LUBA No. 2023-057  
18

---

19  
20                   **NOTICE OF WITHDRAWAL FOR RECONSIDERATION**  
21

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22                   Pursuant to OAR 661-010-0021, Respondent Yamhill County  
23 hereby withdraws for reconsideration, the decision challenged in the  
24 above captioned appeal. LUBA's rules require that the County withdraw  
25 its decision for reconsideration "on or before the date the record is due."  
26 LUBA's rules provide that the County's record is due "within 21 days  
27 after service of the Notice on the governing body." If that 21-day period  
28 is calculated from the date that the Notice of Intent to Appeal certifies

NOTICE OF WITHDRAWAL FOR CONSIDERATION

1 that it was served on the County (July 14, 2023), then the record is due  
2 on August 4, 2023. If that 21-day period is calculated from the date that  
3 the County received the Notice of Intent to Appeal (July 17, 2023), then  
4 the record is due August 7, 2023. Either way, this Notice of Withdrawal  
5 for Reconsideration is timely filed, either on or before the date that the  
6 County record is due.

7 The County understands its obligations under OAR 660-010-0021  
8 to include to file a copy of the decision on reconsideration with LUBA,  
9 and contemporaneously serve all parties to this appeal with a copy of that  
10 reconsideration decision, within 90 days of today's date and within 7 days  
11 of the date such reconsideration decision is adopted.

12 Respectfully submitted and dated this 4th day of August 2023.

13  
14 **YAMHILL COUNTY**

15  
16 

17  
18 Christian Boenisch, County Counsel  
19 OSB #832589

20 Yamhill County Counsel's Office

21 535 NE 5<sup>th</sup> Street

22 McMinnville, OR 97218

23 (503) 434-7420

24 boenischc@co.yamhill.or.us

25 *Of Attorneys for Respondent*  
26

19 Accepted by Yamhill County  
20 Board of Commissioners on  
21 8.3.23 by Board Order  
22 #B.O. 23-295





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LAW GROUP, PC

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July 27, 2023

Via Electronic Mail  
Yamhill County Board of Commissioners  
C/O Ken Friday  
Planning Director  
434 NE Evans Street  
McMinnville, OR  
97128

RE: Friends of Yamhill County v. Yamhill County LUBA No 2023-057

Dear Chair Berschauer and Members of the Board of Commissioners:

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Therefore, Mr. Picker hereby formally requests that you withdraw the decision for reconsideration; instruct staff that you do not intend to reopen the record and that you wish staff to work with the applicant to bring back to you more robust findings to consider for reapproval in a public meeting. If you agree, then you must approve this request no later than August 4, 2023 and instruct county counsel to file the attached Notice of Withdrawal for Reconsideration with LUBA that same day (August 4, 2023). Thank you.

Very truly yours,

Wendie L. Kellington

WLK:wlk  
CC: Scott Picker