Becky Crockett
Planning Director
Curry County Planning Department
Reference: Appeal Number A-2102 9/23/21

To Whom It May Concern:

The purpose of this letter is to refute the Appellant's claims and arguments, regarding the above referenced matter, as set forth in Mr. Gould's Statement of Issues Raised on Appeal dated 6/24/21. It is submitted by Chip and Debbie Shepherd, the adjacent property owners to the north of the Little/Rose (Littles) property, and the appellants in matter heard before the Planning Commission on 5/20/21

First, in paragraph 1, the Appellant states that this *"application is for location of an RV Garage/Storage facility."* That is again an inaccurate representation of the Appellant's intention but accurate as to the written submission deemed complete by the Planning Director. In the original application 21-000034, Appellant's failed to fully disclose that they were constructing an indoor pickleball court in an apparent attempt to circumvent the conditions that were originally required for the outdoor pickleball court. Appellants certified that the information in that application was correct but "pickleball" does not appear anywhere in that application. It was not until after the Shepherds appealed the Planning Director's decision that we officially learned that the Little's true intention was to construct an indoor pickleball facility as stated in Mr. Gould's letter of 3/9/21. The Appellants cannot be allowed to fundamentally alter their planning clearance application after an objecting party has appealed. Therefore, application 21-000034 was at best deficient and at worst fraudulent and the BOC has no basis in the Curry County Ordinance or law to hear this appeal as it pertains to pickleball and this appeal should be denied on its face and the Planning Commission's decision upheld.

Second, in paragraph 3A, Mr. Gould states that in reference to the Little's application for an RV/Garage, *"No one appealed that decision by the Planning Director."* That is incorrect, the Shepherds filed an extensively documented appeal of the Planning Director's decision supported by numerous documents submitted by neighbors immediately adjacent to the property. The entire contents of that appeal are now posted on the Curry County Planning Division webpage and are incorporated herein by this reference.

Third, Mr. Gould in paragraph 3B mischaracterizes the Shepherd's appeal, referring to it as simply objecting to the size and location. I refer you to all the documents that the Shepherds and the neighbors submitted including the 2/22/21 appeal letter which states

in part that this indoor pickleball court “will cause substantial and permanent damage to the Shepherd’s home and to the neighborhood, and is completely incompatible with the surrounding area and land uses for the following reasons. It will be the largest non-residential structure in the neighborhood, and have a larger footprint than our house, other homes in the neighborhood, and probably the Little’s too. This 32x60x25 foot building will be 30 feet from our home and 15 feet from our deck. Much closer to our home than to the Little’s home. It will block the view out of our largest picture window and be plainly visible from our den, living room, and bedroom. For at least 6 months of the year it will cast a shadow on our deck, side yard, and home. During those winter months it will eliminate all passive solar gain we enjoy now and therefore increase our heating costs. As we all know, winter sun is a precious resource on the southern coast of Oregon and the building's shade will preclude the Shepherds from installing solar panels on the south side of their home. Furthermore, the proximity of this enormous structure will increase the fire hazard for the Shepherds in the event it catches fire. For all these reasons the RV garage will cause a substantial diminution in our property value and most definitely in our peaceful enjoyment of our retirement home.” Moreover, the BOC can find authority to protect our access to incident solar radiation in section 13.4 of the Comprehensive Plan indicating the importance of preserving and encouraging the use of solar energy for <u>individuals.</u> Likewise, section 1.090 (g) of the Curry County Zoning Ordinance, indicates that the Commission has the power to implement the comprehensive plan through "protecting and assuring access to incident solar energy."

Paragraph 3B also references Anderson v. Peden in an attempt to dismiss the neighborhood concerns. However, here is what is actually written in that case about neighborhood opposition. "It deserves notice that in the cases invalidating requirements of neighborhood consent, the views of neighboring landowners were not only made a factor in the decision of the responsible authorities; rather, the actual decision was delegated in whole or in part to this class of interested private parties." There is simply no indication anywhere in the record that the Planning Director nor the Planning Commission in any way delegated their decision making authority to the neighbors. Again, Mr. Gould's claims are without merit.

In paragraph 3B Mr. Gould also suggests that since the Shepherd appeal did not specifically ask for the options recommended by the Planning Director, and accepted by the Planning Commission, the Commission’s decision is invalid. This argument fails on the plain language of the Curry County Zoning Ordinance. Section 2.140 reads in part “.... the decision making body shall have the authority to: Grant, deny or, in appropriate cases, attach such conditions to the matter being heard as may be necessary to carry out the Comprehensive Plan.” Furthermore, 2.140 (2) (b) m states that the "decision

making body may state findings which may incorporate findings proposed by any party, or the Director, or may take the matter under advisement." And, we indicated our support for the Planning Directors decision options at the public hearing. Clearly, the Director and the Commission have acted well within the bounds of their authority by requiring the applicant to apply for a conditional use permit for an indoor pickleball court.

Fourth, the arguments of paragraph 3C can be dismissed for three reasons. First, as mentioned earlier, the Little's application for the RV garage was just that, an application to build a garage, not a pickleball court. In essence, it was a false application in an attempt to circumvent the Director's original decision regarding the outdoor court. Second, Mr. Gould writes, *"After discussions with neighbors, and at the suggestion of the neighbors, including the Shepards, Little/Rose agreed to place the court inside a building."* There were no such discussions or agreements where the Littles and the neighbors ever agreed to any such thing. In fact, just the opposite has occurred. Despite repeated attempts on the part of the Shepherds, the Brady's and the Garman/Jensen's to amicably resolve this multi-year dispute, the Littles have refused to compromise in any way. Moreover, it seems spiteful that the Littles want to place the indoor pickleball facility immediately adjacent to the Shepherd's home and as close to the Brady's B&B as possible when there is another viable location that could make the facility more compatible with the neighborhood. Third, the following statement by Mr. Gould is very problematic: *"The Director knew of the Applicants' intentions when they filed the second Application."* He would seem to be suggesting that the Director should evaluate applications on intentions and criteria not actually included in the written application. At best, the Littles submitted an incomplete, if not outright false application, and the Director and the Commission acted accordingly on the information and the evidence submitted by requiring the Little's to submit a new application fully disclosing their intentions to build an indoor pickleball court. One could argue that the Planning Commission was very generous to the Littles by allowing them to resubmit a conditional use permit rather than denying the application outright, one of the options presented by the Planning Director.

The arguments presented in paragraph D also fail for a number of reasons. First and most importantly, the applicant has waived their right to argue against any of the conditions required by the County because they never filed an appeal challenging those conditions in the first instance. The applicant cannot ignore the appeal requirements of the Curry County Zoning Ordinance and expect to then get a "second bite at the apple" in the context of our appeal pertaining to the RV building. Therefore, the Appellant has waived their right to appeal any of the conditions and is estopped from making any challenges whatsoever of the conditions. Furthermore, the conditions are not even close to being "exactions," (as suggested by Mr. Gould,) a legal term for the taking of

private property for public use without just compensation. Appellants counsel wishes to employ the “Dolan” requirements in this matter but one first has to have a taking before Dolan can apply. The cases applying a Dolan analysis have conditions with significant economic and real property consequences. On the facts, this matter is completely different from Dolan. In the Dolan case, the City Planning Commission conditioned approval of Dolan's application to expand her store and pave her parking lot upon her compliance with a dedication of land for a public greenway and for a dedication of land for a pedestrian/bicycle pathway. Such substantial conditions might be considered a taking and would therefore have to meet certain Dolan requirements. However, in this matter the conditions can hardly be construed as the taking of private property and therefore are not subject to Dolan analysis. They are no different than set back requirements, erosion control plans, building height limitations, and a host of other similar conditions required by the County’s ordinances and regulations. The conditions in this matter are well within the Counties authority to regulate private property and are directly related to making the requested use compatible with the surrounding neighborhood and land uses. Section 7.010 states: "In permitting a conditional or permitted use the County may impose conditions in addition to the provisions set for uses within each zone in order to protect the best interests of the surrounding property, the neighborhood, or the County as a whole." Therefore, for all the above reasons, the conditions are in no way unconstitutional.

Finally, the appellants requested relief is vague and fraught with potential problems. Mr. Gould requests the BOC to “*reverse the Final Order to the Planning Commission dated June 17, 2021 and grant approval of application PC-21-000034, with conditions imposed that are proportional to the use to me made of the RV/Storage building which includes playing pickleball inside the building, and necessary to carry out the Comprehensive Plan.”* Again, since application 21-000034 was solely for an RV/Storage and not a pickleball court the BOC has no basis to hear claims related to a pickleball court let alone reverse the actions of the Planning Commission. Moreover, there is a solution that was initially proposed to the Littles back in December 2020 that is more compatible with the neighborhood and the surrounding land uses. To date, the Littles have remained silent about that proposal. If the indoor pickleball court is placed in the north east corner of the Littles property it may be possible to leave the shed where it is, and eliminate most, if not all, of the concerns of the adjacent property owners. As the Planning Director has previously indicated, the Planning Commission is best suited for evaluating such a proposal in the context of a forthright conditional use application by the LIttles.

Thank you for your consideration.
Chip and Debbie Shepherd