

The Motion is Vague and Overly Broad as to the Testimony Applicant seeks to Exclude.

Applicant requests that “any testimony at the evidentiary hearing about local zoning development and permitting should be excluded as irrelevant and immaterial.” This request is extremely broad and requests that the Commission preemptively exclude testimony without any context of the potential testimony or how that testimony may be introduced in a hearing.

In its application to the Commission, the Applicant specifically relied on decisions from Deuel County as a basis for various standards of the permit requested of the Commission (provide specifics-setbacks, noise, shadow flicker etc). To the extent that the parties seek to introduce testimony and evidence related to the issues applicant relied on the County ordinances and standards, other parties should be permitted to introduce testimony and evidence, as well as cross examine Applicant’s witnesses on whether those standards are appropriate and whether the ordinances and standards were developed in an appropriate manner. Such information speaks directly to how much deference and consideration the Commission gives local governing bodies as well as whether other conditions are appropriate. Staff does note that the rules of evidence will still apply to any testimony or evidence sought to be introduce and the parties are free to voice objections throughout the process, Staff only disagrees with the Applicant’s claim that any additional testimony evidence related to local land use decisions should be preemptively excluded. Additionally, permitting the applicant to maintain all testimony and evidence it relied on in its application while not allowing any question or challenge to that information is patently unfair and potentially causes due process concerns.

Excluding Additional Testimony and Evidence Related to Special Exception Permit Is Appropriate as this Issue was Litigated in the Circuit Court and the Special Exception Permit was Invalidated.

Applicant seeks to preemptively exclude additional testimony and evidence related to the Special Exception Permit that was invalidated by the Circuit Court. Staff agrees that in this case it would be appropriate to avoid relitigating this issue before the Commission. While the Applicant did claim that it had obtained a Special Exception Permit in its application, the Applicant has since indicated that this Permit was invalidated. At this point, Staff agrees that relitigating the specific issues decided by the Circuit Court would be irrelevant and unduly repetitious to this proceeding.

In order to avoid relitigating issues related to the Special Exception Permit, Staff proposes the Commission take Judicial Notice of the Circuit Court Ruling invalidating the Special Exception Permit and that Commission exclude testimony and evidence solely related to the Special Exception Permit from this proceeding. Such Commission ruling would recognize that the Applicant does not, as of this date hold a Special Exception Permit from the County and will prevent the matter from being relitigated before the Commission. However, testimony and evidence related to other local land use decisions including, but not limited to Homan's private airstrip permit and the County ordinance currently in effect would not be automatically excluded, though the parties could object to the admission of such testimony as appropriate and the Commission can give any admitted testimony the weight it so deserves.

Staff is Concerned about Permitting Additional Witnesses and Issues.

Staff does have concerns regarding the late notice of six subpoenas sent to additional witnesses by John Homan, as well as the additional witnesses the Applicant intends to subpoena

if the Motion to Exclude is not granted. Per the Procedural Schedule adopted by the Commission, the deadline for prefiled and rebuttal testimony has passed. Additionally, Staff asked Mr. Homan to disclose potential witnesses in Staff's First Set of Data Request to Intervenors sent on February 19, 2019. Mr. Homan did not disclose these witnesses until April 1, 2019 when an email requesting subpoenas of six individuals was filed on behalf of Mr. Homan. Subsequently, Staff was unaware the Applicant had any intent to call additional witnesses until the Applicant filed its Motion to Exclude Testimony Related to Local Land Use Decisions. Neither Mr. Homan, nor the Applicant has indicated how these witnesses are intended to be used and what subject matter they will speak to. Staff is also unclear if the parties intend to introduce new issues to this docket with less than two weeks before the evidentiary hearing is set to begin. Both Mr. Homan and the Applicant have been aware of the specific issues in this docket for some time and have had ample time to disclose their intent to introduce these witnesses. As such, to the extent that the witnesses will be used to provide direct testimony, Staff objects to permitting additional witnesses from both Mr. Homan and Applicant.

Staff does recognize there is some ability to introduce new witnesses for rebuttal and impeachment purposes and Staff does not object to the Commission permitting this. However, Staff does request that the Commission limit the testimony of these witnesses to such purposes. If the Commission does permit these witnesses to testify for any purpose other than rebuttal or impeachment, Staff requests the Commission order the parties to file a disclosure as how the witnesses will be used and the specific issues the witness will testify to.

WHEREFORE, Staff respectfully requests the Commission grant in part the Motion to Exclude Testimony Related to Local Land Use Decisions. Specifically, Staff requests that the Motion to Exclude Local Land Use Decisions to be Granted only as to issues previously litigated

in relation to the Special Exception Permit invalidated by the Circuit Court. Any other objection to the introduction of evidence related to local land use decisions should be handled at the evidentiary hearing when the content and context of the testimony and evidence is apparent. Additionally, Staff requests that the testimony provided by any witness not disclosed through prefiled direct, prefiled supplemental, and prefiled rebuttal testimony be specifically limited to rebuttal and impeachment testimony and evidence.

Dated this 8th day of April 2019.

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