

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. 13-02-26-12

IN THE REMANDING AN APPEAL OF A
HEARINGS OFFICIAL DECISION APPROVING
A TEMPORARY PERMIT FOR AN OUTDOOR
EVENTS VENUE (FILE NO. 509-PA12-05171
/SHRIVES)

WHEREAS, the Lane County Hearings Official has made a decision, approving an Outdoor Events Venue on October 30, 2012, application 509-PA12-05171; and

WHEREAS, the Lane County Planning Director has accepted an appeal of the Hearings Official's Decision to the Board of County Commissioners pursuant to LC 14.515; and

WHEREAS, the Lane County Hearings Official has affirmed his decision for application 509-PA12-05171 on November 16, 2012; and

WHEREAS, per Order No. 12-12-11-10, the Board of County Commissioners elected to hear the appeal pursuant to LC 14.600; and

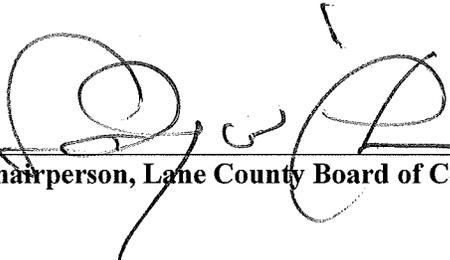
WHEREAS, the Board of County Commissioners held on on-the-record hearing for this matter on February 5, 2013; and

WHEREAS, the Board of County Commissioners has deliberated on this matter at a public meeting of the Board; NOW

THEREFORE, BE IT ORDERED the Board of County Commissioners of Lane County finds and orders as follows:

1. That the Board dismisses the first four assignments of error in the appeal filed on November 13, 2012. In regards to the fifth assignment of error, the Board finds the Hearings Official decision of October 30, 2012 deficient in regards to the status of the tent structure and gazebo within the context of LC 16.255(2)(a)(ii). Findings in support of this Order are found in the attached Exhibit "A".
2. The Board remands application 509-PA 12-05171 to the Hearings Official for a de novo hearing under the authority of LC 14.400(3). The de novo hearing is limited to taking testimony and making findings to determine whether the tent structure and gazebo were new or existing structures under LC 16.255(2)(a)(ii) as of the date the application was deemed complete.

Adopted this 26th day of February, 2013



Chairperson, Lane County Board of Commissioners

APPROVED AS TO FORM
Date 2/26/13 Lane County


OFFICE OF LEGAL COUNSEL

FINDINGS IN SUPPORT OF THE ORDER

1. Property involved in this action is identified as tax lot 201, map 19-03-25, located at 81930 Sears Road, with a base zone of F-2 (Impacted Forest Lands, LC 16.211). The entire parcel is located within the Willamette River Greenway (LC 16.254), and most of it is within the FEMA 100 year floodhazard zone (LC 16.244). The river, a Class 1 stream, is subject to the Riparian Regulations (LC 16.253). The property is within the jurisdiction of the Lane County Rural Comprehensive Plan and Lane Code Chapter 16.
2. In March, 2012, in the form of application 509-PA12-05171, the property owners and applicant, Margaret and Mark Shrives, requested that a Temporary Permit be granted by the Hearings Official for an outdoor events venue, pursuant to Lane Code 16.255(2)(a)(ii). After the provision of a traffic study, the application was deemed complete for processing on June 20, 2012.
3. On August 2, 2012, a public hearing was held. The record was left open until October 8, 2012 for written submittals, a site visit, and a sound test.
4. On October 30, 2012, the Hearings Official rendered his decision, conditionally approving the request.
5. On November 13, 2012, a timely appeal of the Hearings Official's decision was filed by a neighbor opposed to the request.
6. On November 14, 2012, the Planning Director accepted the appeal, and forwarded it to the Hearings Official for his review. On November 16, 2012, and after reviewing the appeal, the Hearings Official affirmed his decision.
7. The appeal was taken before the Board of Commissioners on December 11, 2012, and the Board approved Order No. 12-12-11-10 to hear the appeal, with findings that it complied with the criteria of LC 14.600(3), and elected to conduct an on-the-record hearing on February 5, 2013, at 1:30 P.M.
8. Exhibit "B" to Order No. 12-12-11-10, which listed the parties eligible to participate in the hearing, was in error. This was corrected on January 15, 2013, when the Board approved Order No. 13-01-15-1.
9. On February 5, 2013, the Board held an on-the-record hearing. The hearing was closed, and the record left open for the submittal of written materials until February 12, 2013.
10. On February 26, 2013, the Board held a public meeting and deliberated on the matter

11. The Board dismissed the first assignment of error of the appeal, ruling that the five year limit imposed on a Temporary Use Permit issued per LC 16.255 constitutes the temporary nature of such permits.
12. The Board dismissed the second assignment of error of the appeal, ruling that the proposal is not a violation of statewide Goal 4 and the associated OAR 660, Division 6, recognizing that LC 16.255 is an ordinance reviewed and acknowledged by the state during the Comprehensive Plan acknowledgement process.
13. The Board dismissed the third assignment of error of the appeal, ruling that the Temporary Use Permit ordinance, LC 16.255, does not contain a nexus to the Riparian ordinance, LC 16.253 or the Greenway ordinance, LC 16.254, and therefore compliance with those ordinances is not required in evaluating a Temporary Use Permit.
14. The Board dismissed the fourth assignment of error, ruling that the proposal was properly applied for, noticed, and evaluated under LC 16.255(2)(a)(ii).
15. The Board finds in regards to the fifth assignment of error that the Hearings Official erred in regards to condition number one of his decision of October 30, 2012, which eliminated use of the tent and gazebo from the approval. The Hearings Official's decision contains no findings in support of the contention that the tent and gazebo structures are "new" structures within the context of LC 16.255(2)(a)(ii).
16. The Board finds that a de novo hearing limited to the issue of accepting testimony concerning the "new" or "existing" status of the tent structure and gazebo within the context of LC 16.255(2)(a)(ii) is warranted.
17. The Board finds that conducting the de novo hearing would interfere with its agenda, and therefore remands the proposal back to the Hearings Official under the authority of LC 14.400(3) and LC 14.400(3)(a).