

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO:
16-08-02-10

IN THE MATTER OF ELECTING WHETHER OR NOT TO HEAR AN APPEAL OF A HEARINGS OFFICIAL'S RECONSIDERED DECISION APPROVING A TEMPLATE FOREST DWELLING IN THE IMPACTED FOREST LANDS ZONE (F-2); ASSESSOR'S MAP 19-15-30, TAX LOT 402 (FILE NO. 509-PA15-05777/SAYRE).

WHEREAS, the Lane County Hearings Official has made a decision approving a Template Forest Dwelling application in Department File No. 509-PA15-05777; and

WHEREAS, the Lane County Planning Director has an appeal of the Hearings Official's Decision to the Board of County Commissioners pursuant to LC 14.515(3)(f)(ii); and

WHEREAS, the Lane County Hearings Official has affirmed his decision on the application after reviewing the appeal in File No. 509-PA15-05777; and

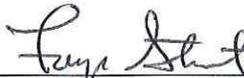
WHEREAS, Lane Code 14.600 provides the procedure and criteria which the Board follows in deciding whether or not to conduct an on the record hearing for an appeal of a decision by the Hearings Official; and

WHEREAS, the Board of County Commissioners has reviewed 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 appeal does not comply with the criteria of Lane Code 14.600(3) and arguments on the appeal should therefore not be considered. Findings in support of this decision are attached as Exhibit "A."
2. That the Lane County Hearings Official decision dated June 27, 2016, and the letter affirming the decision dated July 12, 2016, attached as Exhibit "B," that found relevant approval criteria are met are affirmed and adopted by the Board of County Commissioners as the County's final decision. The Board of County Commissioners has reviewed the appeal and the Hearings Official decision and expressly agrees with and adopts the interpretations of Lane Code 16.211(5) made by the Hearings Official in the decision.

ADOPTED this 2nd day of August, 2016.



Faye Stewart, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 3/26/16 Lane County



OFFICE OF LEGAL COUNSEL

Order Exhibit "A"

FINDINGS IN SUPPORT OF THE ORDER

1. The property subject to this application, hereinafter referred to as the "subject property," is located on tax lot 402, assessor's map 19-15-30, and is located at 81886 Carter Lane, a private road that connects to State Highway 58 located to the northeast. The subject site is south of Lookout Point Lake and approximately two and half miles southeast of the City of Lowell. The property is within the Lane County Rural Comprehensive Plan boundary designated Forest and is Zoned Impacted Forest Lands (F-2) consistent with the designation.
2. The subject property is approximately 1.29 acres in size, is mostly forested, and is developed with a barn and a mostly deconstructed dwelling that no longer meets requirements for a replacement dwelling as provided in Lane Code 16.211(4). The property appears to contain relatively mature conifer trees that cover the western and northern portions of the property. The property generally slopes from east to west from approximately 1,090 feet to 1,160 feet above MSL, with moderate slopes in the eastern portion of the site and steep slopes in the western site corner.
3. The subject property was determined to be a lawfully created parcel and is identified as a Preliminary Legal Lot in Legal Lot Verification 509-PA05-06544. Notice for Preliminary Legal Lot Verification 509-PA05-06544 was also provided with the application.

The subject property was originally subject to preliminary partition approval M 212-79 granted by the Lane County Land Development Review Committee on April 26, 1979 to Aulber Carter. The subject property was Parcel 1 of the two parcels created by this partition. Approval was granted for a one-year period in which the four conditions of approval had to be satisfied. At this time, it was the responsibility of the County to record a final partition map once conditions of approval were timely met. In July of 1980, Lane County sent the Applicant a letter informing him that the conditions had not been completed and that conditional approval had expired.

In 1996, the owner of the property offered proof to the Planning Director that all conditions of approval had been met within the one-year period. The following proof was offered:

- Condition #1 required the submittal of a final partition map and fee. Receipt #91918 was given to Larry Olson, a licensed surveyor, for \$7.00 from the Planning Department on April 1, 1980 for "M 212-79 recording fee."
- Condition #2 required the submittal of a survey to the Lane County Surveyor's Office. A receipt dated April 1, 1980 identifies a 14 x 17 survey for Aulber Carter was received from David Thompson. This survey was assigned County Survey File No. 23918 and was filed with the Surveyor's Office on April 11, 1980.
- Condition #3 required the final partition map to illustrate the location of the existing dwellings and sewage disposal systems on each parcel. The final map referred to in Condition #1 contained this information.
- Condition #4 required the recording of a deed for each parcel that contained a non-exclusive easement for access. Deeds containing this easement were signed on April 9, 1980 and recorded on April 11, 1980.

Lane County staff confirmed that the conditions of preliminary approval had been satisfied within one year of preliminary approval and the final partition map was recorded on April 8, 1996. No notice of this approval was sent out but it was not a land use decision under ORS 197.015(10)(b)(A) as it did not require an interpretation of the exercise of policy or legal judgment.

4. The boundaries of the subject property were altered through a property line adjustment in 1999. (The adjusting document is recorded on Reel 2581, Instrument 99071896, Lane County Department of Deeds & Records.) Both the parcels involved in the adjustment were created by partitions approved by Lane County. The subject property, tax lot 402, was created as Parcel 1 of Partition M 212-79 and the other property, tax lot 312, was created as Parcel 1 of Partition PA 3033-88. Both of the parcels were substandard in size at the time of the property line adjustment. The property line adjustment increased the size of tax lot 402 by .29 acres at the expense of tax lot 312. Tax lot 312 was zoned F-2, which had a minimum lot size of 80 acres, was 26.07 acres in size. The subject property, which was one acre in size, had split zoning. (The zoning map indicated that the northeast corner was zoned RR-5 and the western portion zoned F-2.) The legal lot verification of the subject property in 2005 (PA 05-6544) incorrectly identified the zoning of tax lot 402 as R-2 but regardless of whether the parcel was zoned RR-2, RR-5 or F-2, it was smaller than the minimum lot size and the property line adjustment did not change the parcel's nonconforming status.

By 2005, Lane County had a policy that allowed the adjustment of the boundaries between two parcels that were both below the minimum lot size specified by their zoning. This policy has been subsequently codified in Lane Code 13.450(5)(b)(ii). Planning Director approval for property line adjustments in Lane County was not required prior to 2009.

Prior to the recording of the property line adjustment in 1999, no mapping of Parcel 1 of Partition PA 3033-88 or Parcel 2 of Partition PA 1818-85 was performed by the Lane County Department of Assessment & Taxation (A&T). The parcels created by those partitions were contained within the boundaries of tax lots 303 and 306 but did not conform to the tax lot boundaries. No adjustments to the legal descriptions are reflected on the A&T description cards in 1985 or 1988 for the creation of the partition parcels. When the property line adjustment occurred, the legal description of Parcel 1 of Partition PA 3033-88 was mapped by A&T and given a tax lot number 312 (25.79 acres from tax lot 303). The .29 acre area adjusted in 1999 and added to the subject property also came out of tax lot 303. If one just relied upon the A&T description card for tax lot 312 it would appear that it was created in 1999. The Department of Assessment & Taxation relies upon recorded deeds for mapping legal descriptions for assessment purposes and prior to 1990 partitions were not done with recorded plats nor were legal descriptions required to be recorded at the time a parcel was created. Subsequent conveyance of the properties produced the legal description that finally allowed A&T to mapped tax lots in conformance with approved partition parcel boundaries.

5. The subject property and the fourteen parcels relied upon by the Applicant in his forest dwelling template test were first zoned FF-20 on August 22, 1979 by Lane County Ordinance 735. Of the 14 parcels, Parcels 2-6, 8, and 10-12 were rezoned to RR-5 on February 29, 1984 through Ordinance 884. The same ordinance rezoned Parcels 1, 7, and 9 to F-2 and Parcels 13 and 14 to F-1. The following is an identification of the 14 parcels that lie within the 160-acre square centered on the subject property:
 - Parcel 1 can be identified as tax lot 100, assessor's map 19-15-30. The deed creating this parcel was recorded prior to 1941. The parcel was reduced in size in 1964, prior to any zoning or land division regulations, and remains in this configuration today.
 - Parcel 2 can be identified as tax lot 200, assessor's map 19-15-30. This parcel was created in 1957, prior to any zoning or land division regulations, and is in its original configuration.
 - Parcel 3 can be identified as tax lot 302, assessor's map 19-15-30. This parcel was created in 1977 as Parcel 2 of Partition M 580-77 and is in its original configuration.
 - Parcel 4 can be identified as tax lot 304, assessor's map 19-15-30. This parcel was created in 1971 by deed, prior to any zoning or land division regulations, and is in its original configuration.

- Parcel 5 can be identified as tax lot 307, assessor's map 19-15-30. This parcel was created in 1974 by deed and is in its original configuration.
 - Parcel 6 can be identified as tax lot 308, assessor's map 19-15-30. This parcel was created in 1977 as Parcel 1 of Partition M 580-77 and is in its original configuration.
 - Parcel 7 can be identified as tax lot 309, assessor's map 19-15-30. This parcel was created in 1990 as Parcel 2 of Partition PA 3033-88 and has been in its current configuration since 1990.
 - Parcel 8 can be identified as tax lot 300, assessor's map 19-15-30. This is the parent parcel of tax lots 310 and 311 which are counted as only one parcel in the configuration of tax lot 300 as it existed in 1993. This parcel was created by deed in 1965.
 - Parcel 9 can be identified as tax lot 312, assessor's map 19-15-30. This parcel was created as Parcel 2 of Partition PA 3033-88. It was a substandard-sized parcel that was subject to a property line adjustment in 1999. (See Finding of Fact #4, above.)
 - Parcel 10 can be identified as tax lot 305, assessor's map 19-15-30. In 1993 it was configured with most of the area found in current tax lot 313 and these two tax lots together are counted as only one parcel in the configuration of old tax lot 305 as it existed in 1993. Only the old tax lot 305 is being counted. Tax lot 305 was originally created by deed in 1966.
 - Parcel 11 can be identified as tax lot 900, assessor's map 19-15-30. This parcel was created by deed in 1959 and was verified as a legal lot in 2001 via PA 01-5785.
 - Parcel 12 can be identified as tax lot 901, assessor's map 19-15-00. This parcel was created by deed in 1964, prior to any zoning or land division regulations.
 - Parcel 13 can be identified as tax lot 103, assessor's map 19-01-00. This parcel was created by deed in 1971, prior to any zoning or land division regulations.
 - Parcel 14 can be identified as tax lot 200, assessor's map 19-01-00. This parcel was created in 1954, prior to any zoning or land division regulations, and modified by the addition of 80 acres in 1958. It has been in the same configuration from 1974 to the present.
6. The subject property abuts parcels to the north, west, and south also designated as Forest on the Rural Comprehensive Plan and zoned Impacted Forest Lands (F-2). To the east and across Carter Lane are adjacent parcels designated Residential and zoned Rural Residential (RR-5). The surrounding properties are rural in character and contain uses that are normally associated with low density residential development. Adjacent parcels are in different ownership and therefore the subject parcel is not a part of a tract. The site was formerly developed with a 1975 manufactured dwelling. Beyond that are properties zoned Nonimpacted Forest (F-1) that appear to be forested and/or in commercial forest use.
7. The proposed dwelling location is located approximately 60 feet from the existing private road (Carter Lane) and within approximately 160 feet of the dwelling on the abutting parcel to the south (Tax Lot 401) and approximately 735 feet of the dwelling located on Map and Tax Lot 19-15-00-00-00604. The general vicinity along Carter Lane is developed with low density, rural residential structures in addition to forest uses.

Specifically, no F-1 zoned properties are within 500 feet from the subject property. The proposed dwelling is located approximately 70 feet from adjoining property zoned F-2 to the west, approximately 90 feet from adjoin property zoned F-2 to the north, and approximately 110 feet to the adjoining property zoned F-2 to the south.

Based on LIDAR imagery and contour data, there do appear to be slopes greater than 40% within the subject site. However, it appears that the proposed dwelling will be located at least 30 feet from these steep slopes. This has also been made a condition of approval. As proposed and conditioned, the proposed home site location conforms to the requirements described above so that it will be sited near existing roads, tracts, and the most level area and away from the steep slopes located on portions of the parcel.

8. The proposed home site contains “non-high” values soils described as Ritner Cobbly Silty Clay Loam (30 to 60% slopes) and Bellpine Cobbly Silty Clay Loam (2 to 30% slopes), which are not generally as productive for farm and forestry uses. However, the Applicant has chosen to apply for the most restrictive provisions of Lane Code 16.211(5)(c) so that a definitive soils analysis of the subject property is not required.
9. As Lane Code 16.211(5)(c)(iii) is applicable in this instance, Lane Code 16.211(5)(c)(iii)(aa) requires that at least all or a part of at least eleven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the subject tract. The Applicant has included the following tax lots in his parcel count: tax lots 100, 200, 300 (310 & 311), 302, 304, 305, 307, 308, 309, 312, 900 and 901, assessor's map 19-15-30; and tax lots 103 and 200, assessor's map 19-01-00.

Subsection (c)(iii)(bb) requires that three dwellings existed on January 1, 1993, and continue to exist on lots located within a 160 acre square centered on the subject tract. The Applicant has included dwellings on the following tax lots to meet this standard: 100, 200, 302, 307, 308, and 309, assessor's map 19-15-30.

10. On November 23, 2015, the applicant submitted a request to establish a dwelling in the Impacted Forest Lands (F-2) zone to Lane County Land Management Division. On December 22, 2015, staff reviewed the application materials and deemed the application complete. On April 20, 2016, the Director issued a determination that the subject property complied with the applicable standards and criteria for a Forest Template Dwelling pursuant to LC 16.211(5) and (8). Notice of the pending land use decision was mailed to surrounding property owners. On May 2, 2016, a timely appeal of the Planning Director's decision was submitted by LandWatch Lane County.
11. On June 2, 2016, the Lane County Hearings Official conducted a public hearing. The record was held open until June 23, 2016. On June 27, 2016 the Lane County Hearings Official issued a decision approving the application. Notice of the Hearings Official's decision was mailed to the applicant and all parties of record on June 29, 2016.
12. On July 11, 2016, the appellant filed a timely appeal and requested that the Board of County Commissioners not conduct a hearing on the appeal and deem the Hearings Officer's decision the final decision of the County, pursuant to LC 14.515(3)(f)(ii).
13. On July 12, 2016, the Hearings Official reviewed the appeal and affirmed his decision without further consideration pursuant to LC 14.535(1).
14. In order for the Board to hear arguments on the appeal, Lane Code 14.600(3) requires one or more of the following criteria to be found by the Board to apply to the appeal:
 - The issue is of Countywide significance.
 - The issue will reoccur with frequency and there is a need for policy guidance.
 - The issue involves a unique environmental resource.
 - The Planning Director or Hearings Official recommends review.
15. The Planning Director has consistently recognized parcels created by Minor (M) Partitions filed prior to 1990 as legal lots that satisfy the criteria in Lane Code 16.211(5)(b). The Planning Director also recognizes as legal lots properties that have been determined as preliminary legal lots, pending final notice, pursuant to Lane County policy. The issues raised on appeal regarding the legal lot status of the subject property are specific to the history of creation and subsequent reconfiguration of the property,

and the subject property was determined to be a legal lot through legal lot verification file no. 509-PA05-06544. As described in the Hearings Official's June 27, 2016 decision, the determination that the subject property is a legal lot was guided by Lane County policy in effect by 2005 that allowed the adjustment of boundaries between two parcels that are both below the minimum lot size specified by their zone, and the Planning Director has consistently implemented this policy.

The Planning Director has consistently found properties that lawfully existed on January 1, 1993 and that were subsequently lawfully subdivided or partitioned to satisfy the criteria in Lane Code 16.211(5)(c)(iii)(aa), provided only those lots or parcels that existed on January 1, 1993 are counted in the template analysis. The findings regarding Lane Code 16.211(5)(c)(iii)(aa) in this application were consistent with this practice, and are supported by the fact that the parent parcel was created by deed in 1965 with R259D, Instrument #92314 and verified as a legal lot in 1997 with PA 902-97.

The Planning Director and subsequently on appeal, the Hearings Official, have consistently found that the "date of creation" language is not applicable to template dwelling approvals.

Both the Hearings Official's original decision dated June 27, 2016 and his decision not to further consider the application dated July 12, 2016 support these practices.

The Hearings Official's decision presents a reasonable interpretation of Lane Code 16.211(5)(b) and (c)(iii)(aa) with regard to the issues raised in this appeal, should other Forest Template Dwelling applications with similar fact patterns be proposed. Therefore, the Planning Director does not believe that the implications of the decision are of countywide significance.

16. Forest Template Dwelling applications are a common land use application made to the County. Irrespective of the frequency of this type of application, when these issues have been presented, the Planning Director has recognized as legal lots subject properties that were created by M-Partition and subsequently adjusted through a lawful property line adjustment, contingent upon legal lot verification and final legal lot notice of the subject property.

The Director has also found consistently that legal lots or parcels that existed on January 1, 1993 and subsequently divided continue to comply with LC 16.211(5)(c)(iii)(aa) provided only the parent parcel is counted in the template analysis. Third, the Planning Director and subsequently on appeal, the Hearings Official, have consistently found that the "date of creation" language is not applicable to template dwelling approvals. The Hearings Official's decision supports these practices. Additionally, the appeal in part relates to specific history of the creation of the subject parcel. Therefore, the Planning Director does not believe the issue involved in this appeal will reoccur with frequency.

In the event that a comparable proposal and fact pattern comes before the Land Management Division, the Hearings Official's decision presents a reasonable interpretation of Lane Code 16.211(5)(b) and (c)(iii)(aa). The Planning Director does not believe there is a need for further policy guidance. If these issues arise in the future, the Hearings Official's decision provides guidance.

17. The subject property does not constitute a unique environmental resource. To the extent that the forested areas of the property constitute a unique environmental resource, the provisions of Lane Code 16.211(5) implement the intent of the Impacted Forest Lands Zone (F-2).
18. The Planning Director does not recommend review of the appeal on the record for the reasons cited above.
19. To meet the requirements of Lane Code 14.600(2)(b), the Board is required to adopt a written decision and Order electing to have a hearing on the record for the appeal or declining to further review the appeal.

20. The Board has reviewed this matter at its meeting of August 2, 2016, and finds that the appeal does not comply with the criteria of Lane Code Chapter 14.600(3), declines further review, and elects not to hold an on the record hearing for the appeal.
21. The Board affirms and adopts the Hearings Official decision of June 27, 2016, as the County's final decision in this matter, has reviewed that decision, and expressly agrees with and adopts the interpretations of Lane Code 16.211(5) made by the Hearings Official in the decision.



June 27, 2016

Ms. Lydia McKinney, Manager
Lane County Land Management Division
Public Service Building
125 E. 8th Ave.
Eugene, OR 97401

Re: Appeal of Director Approval of the Sayre Request (PA 15-05777) of a Template Dwelling Within an F-2 Impacted Forest Lands District

Dear Ms. McKinney:

Please find the Lane County Hearings Official's decision affirming the Planning Director's approval of the Sayre request (PA 15-05777) of a template dwelling within an F-2 Impacted Forest Lands District on tax lot 402, assessor's map 19-15-30.

Sincerely,

Gary L. Darnielle
Lane County Hearings Official

CC: Amber Bell (file)

**LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR APPROVAL OF A TEMPLATE
DWELLING WITHIN AN F-2 DISTRICT**

Application Summary

On November 23, 2015, a request to establish a dwelling in the Impacted Forest Lands (F-2) zone was submitted to Lane County Land Management Division by Thom Lanfear, an agent for Terry Sayre. On December 22, 2015, staff reviewed the application materials and deemed the application complete. On April 20, 2016, the Director issued a determination that the subject property complied with the applicable standards and criteria for a Forest Template Dwelling pursuant to LC 16.211(5) and (8). Notice of the determination was mailed to surrounding property owners. On May 2, 2016, a timely appeal was submitted by LandWatch Lane County.

Parties of Record

Terry Sayre	LandWatch Lane County	Thom Lanfear
Sean Malone	Robert Emmons	Lauri Segel-Vaccher

Application History

Hearing Date: June 2, 2016
 (Record Held Open Until June 23, 2016)

Decision Date: June 27, 2016

Appeal Deadline

An appeal must be filed within 12 days of the issuance of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

Lane Code 16.211(5)&(8)

Findings of Fact

1. The property subject to this application, hereinafter referred to as the “subject property,” is located on tax lot 402, assessor’s map 19-15-30, and is located at 81886 Carter Lane, a private road that connects to State Highway 58 located to the northeast. The subject site is south of Lookout Point Lake and approximately two and half miles southeast of the City of Lowell. The property is within the

Lane County Rural Comprehensive Plan boundary designated Forest and is Zoned Impacted Forest Lands (F-2) consistent with the designation.

2. The subject property is approximately 1.29 acres in size, is forested and is developed with a barn and a mostly deconstructed dwelling that no longer meets requirements for a replacement dwelling as provided in LC 16.211(4). The property appears to contain relatively mature conifer trees that cover the western and northern portions of the property. The property generally slopes from east to west from approximately 1,090 feet to 1,160 feet above MSL, with moderate slopes in the eastern portion of the site with steeper slopes in the western site corner.
3. The subject property was determined to be a lawfully created parcel and is identified as a Preliminary Legal Lot in Legal Lot Verification 509-PA05-06544. Notice for Preliminary Legal Lot Verification PA 05-06544 was also provided with the application.

The subject property was originally subject to preliminary partition approval M 212-79 granted by the Lane County Land Development Review Committee on April 26, 1979 to Aulber Carter. The subject property was Parcel 1 of the two parcels created by this partition. Approval was granted for a one-year period in which the four conditions of approval had to be satisfied. At this time, it was the responsibility of the County to record a final partition map once conditions of approval were timely met. In July of 1980, Lane County sent the Applicant a letter informing him that the conditions had not been completed and that conditional approval had expired.

In 1996, the owner of the property offered proof to the Planning Director that all conditions of approval had been met within the one-year period. The following proof was offered:

- Condition #1 required the submittal of a final partition map and fee. Receipt #91918 was given to Larry Olson, a licensed surveyor, for \$7.00 from the Planning Department on April 1, 1980 for "M 212-79 recording fee."
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- Condition #3 required the final partition map to illustrate the location of the existing dwellings and sewage disposal systems on each parcel. The final map referred to in Condition #1 contained this information.

- Condition #4 required the recording of a deed for each parcel that contained a nonexclusive easement for access. Deeds containing this easement were signed on April 9, 1980 and recorded on April 11, 1980.

Lane County staff confirmed that the conditions of preliminary approval had been satisfied within one year of preliminary approval and the final partition map was recorded on April 8, 1996. No notice of this approval was sent out but it was not a land use decision under ORS 197.015(10)(b)(A) as it did not require an interpretation of the exercise of policy or legal judgment.

4. The boundaries of the subject property were altered through a property line adjustment in 1999. (The adjusting document is recorded on Reel 2581, Instrument 99071896, Lane County Department of Deeds & Records.) Both the parcels involved in the adjustment were created by partitions approved by Lane County. The subject property, tax lot 402, was created as Parcel 1 of Partition M 212-79 and the other property, tax lot 312, was created as Parcel 1 of Partition PA 3033-88. Both of the parcels were substandard in size at the time of the property line adjustment. The property line adjustment increased the size of tax lot 402 by .29 acres at the expense of tax lot 312. Tax lot 312 was zoned F-2, which had a minimum lot size of 80 acres, was 26.07 acres in size. The subject property, which was one acre in size, had split zoning. (The zoning map indicated that the northeast corner was zoned RR-5 and the western portion zoned F-2.) The legal lot verification of the subject property in 2005 (PA 05-6544) incorrectly identified the zoning of tax lot 402 as R-2 but regardless of whether the parcel was zoned RR-2, RR-5 or F-2, it was smaller than the minimum lot size and the property line adjustment did not change the parcel's nonconforming status.

By 2005, Lane County had a policy that allowed the adjustment of the boundaries between two parcels that were both below the minimum lot size specified by their zoning. This policy has been subsequently codified in Lane Code 13.450(5)(b)(ii). Planning Director' approval for property line adjustments in Lane County was not required prior to 2009.

Prior to the recording of the property line adjustment in 1999, no mapping of Parcel 1 of Partition PA 3033-88 or Parcel 2 of Partition PA 1818-85 was performed by the Lane County Department of Assessment & Taxation (A&T). The parcels created by those partitions were contained within the boundaries of tax lots 303 and 306 but did not conform to the tax lot boundaries. No adjustments to the legal descriptions are reflected on the A&T description cards in 1985 or 1988 for the creation of the partition parcels. When the property line adjustment occurred, the legal description of Parcel 1 of Partition PA 3033-88 was mapped by A&T and given a tax lot number 312 (25.79 acres from tax lot 303). The .29 acre area adjusted in 1999 and added to the subject property also came out of tax lot 303. If one just relied upon the A&T description card for tax lot 312 it would appear that it was created in 1999. The Department of Assessment & Taxation

relies upon recorded deeds for mapping legal descriptions for assessment purposes and prior to 1990 partitions were not done with recorded plats nor were legal descriptions required to be recorded at the time a parcel was created. Subsequent conveyance of the properties produced the legal description that finally allowed A&T to mapped tax lots in conformance with approved partition parcel boundaries.

5. The subject property and the fourteen parcels relied upon by the Applicant in his forest dwelling template test were first zoned FF-20 on August 22, 1979 by Lane County Ordinance 735. Of the 14 parcels, Parcels 2-6, 8, and 10-12 were rezoned to RR-5 on February 29, 1984 through Ordinance 884. The same ordinance rezoned Parcels 1, 7, and 9 to F-2 and Parcels 13 and 14 to F-1. The following is an identification of the 14 parcels that lie within the 160-acre square centered on the subject property:

- Parcel 1 can be identified as tax lot 100, assessor's map 19-15-30. The deed creating this parcel was recorded prior to 1941. The parcel was reduced in size in 1964, prior to any zoning or land division regulations, and remains in this configuration today.
- Parcel 2 can be identified as tax lot 200, assessor's map 19-15-30. This parcel was created in 1957, prior to any zoning or land division regulations, and is in its original configuration.
- Parcel 3 can be identified as tax lot 302, assessor's map 19-15-30. This parcel was created in 1977 as Parcel 2 of Partition M 580-77 and is in its original configuration.
- Parcel 4 can be identified as tax lot 304, assessor's map 19-15-30. This parcel was created in 1971 by deed, prior to any zoning or land division regulations, and is in its original configuration.
- Parcel 5 can be identified as tax lot 307, assessor's map 19-15-30. This parcel was created in 1974 by deed and is in its original configuration.
- Parcel 6 can be identified as tax lot 308, assessor's map 19-15-30. This parcel was created in 1977 as Parcel 1 of Partition M 580-77 and is in its original configuration.
- Parcel 7 can be identified as tax lot 309, assessor's map 19-15-30. This parcel was created in 1990 as Parcel 2 of Partition PA 3033-88 and has been in its current configuration since 1990.
- Parcel 8 can be identified as tax lot 300, assessor's map 19-15-30. This is the parent parcel of tax lots 310 and 311 which are counted as only one parcel in the configuration of tax lot 300 as it existed in 1993. This parcel was created by deed in 1955.
- Parcel 9 can be identified as tax lot 312, assessor's map 19-15-30. This parcel was created as Parcel 2 of Partition PA 3033-88. It was a substandard-sized parcel that was subject to a property line adjustment in 1999. (See Finding of Fact #4, above.)

- Parcel 10 can be identified as tax lot 305, assessor's map 19-15-30. In 1993 it was configured with most of the area found in current tax lot 313 and these two tax lots together are counted as only one parcel in the configuration of old tax lot 305 as it existed in 1993. Only the old tax lot 305 is being counted. Tax lot 305 was originally created by deed in 1966.
 - Parcel 11 can be identified as tax lot 900, assessor's map 19-15-30. This parcel was created by deed in 1959 and was verified as a legal lot in 2001 via PA 01-5785.
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6. The subject property abuts parcels to the north, west, and south also designated as Forest on the Rural Comprehensive Plan and zoned Impacted Forest Lands (F-2). To the east and across Carter Lane are adjacent parcels designated Residential and zoned Rural Residential (RR-5). The surrounding properties are rural in character and contain uses that are normally associated with low density residential development. Adjacent parcels are in different ownership and therefore the subject parcel is not a part of a tract. The site was formerly developed with a 1975 manufactured dwelling. Beyond that are properties zoned Nonimpacted Forest (F-1) that appear to be forested and/or in commercial forest use.
7. The proposed dwelling location is located approximately 60 feet from the existing private road (Carter Lane) and within approximately 160 feet of the dwelling on the abutting parcel to the south (Tax Lot 401) and approximately 735 feet of the dwelling located on Map and Tax Lot 19-15-00-00-00604. The general vicinity along Carter Lane is developed with low density, rural residential structures in addition to forest uses.

Specifically, no F-1 zoned properties are within 500 feet from the subject property. The proposed dwelling is located approximately 70 feet from adjoining property zoned F-2 to the west, approximately 90 feet from adjoining property zoned F-2 to the north, and approximately 110 feet to the adjoining property zoned F-2 to the south.

Based on LIDAR imagery and contour data, there do appear to be slopes greater than 40% within the subject site. However, it appears that the proposed dwelling will be located at least 30 feet from these steep slopes. This has also been made a

condition of approval. As proposed and conditioned, the proposed home site location conforms to the requirements described above so that it will be sited near existing roads, tracts, and the most level area and away from the steep slopes located on portions of the parcel.

8. The proposed home site contains “non-high” values soils described as Ritner Cobbly Silty Clay Loam (30 to 60% slopes) and Bellpine Cobbly Silty Clay Loam (2 to 30% slopes), which are not generally as productive for farm and forestry uses. However, the Applicant has chosen to apply for the most restrictive provisions of Lane Code 16.211(5)(c) so that a definitive soils analysis of the subject property is not required.

As Lane Code 16.211(5)(c)(iii) is applicable in this instance, Lane Code 16.211(5)(c)(iii)(aa) requires that at least all or a part of at least eleven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the subject tract. The Applicant has included the following tax lots in his parcel count: tax lots 100, 200, 300 (310 & 311), 302, 304, 305, 307, 308, 309, 312, 900 and 901, assessor's map 19-15-30; and tax lots 103 and 200, assessor's map 19-01-00.

Subsection (c)(iii)(bb) requires that three dwellings existed on January 1, 1993, and continue to exist on lots located within a 160 acre square centered on the subject tract. The Applicant has included dwellings on the following tax lots to meet this standard: 100, 200, 302, 307, 308, and 309, assessor's map 19-15-30.

Decision

THE PLANNING DIRECTOR DECISION APPROVING THE REQUEST (PA 15-05777) BY TERRY SAYRE FOR A TEMPLATE FOREST DWELLING ON TAX LOT 402, ASSESSOR'S MAP 19-15-30 IS AFFIRMED.

Justification for the Decision (Conclusion)

The subject property is zoned F-2 Impacted Forest Land. The applicant is requesting approval to construct a single-family dwelling as provided by Lane Code 16.211(5)(c). Dwellings authorized by this provision are known as “forest template” dwellings because some of the applicable approval criteria of Lane Code 16.211(5) must be analyzed through the placement of a 160-acre square template centered on the center of the subject property (tract). Additionally, the placement of a dwelling on non-impacted forest land must meet the siting standards provided by Lane Code 16.211(8).

Under the template dwelling regulations, the standards differ depending upon the soil productivity of the property upon which the dwelling is to be placed. In the present case, the soils on the subject property are capable of producing about 154 cubic feet per acre per year of wood fiber. Therefore, Lane Code 16.211(5)(c)(iii) is applicable. Under Subsection (aa) of this standard, the applicant must demonstrate that all or a part of at

least eleven other lots or parcels that existed on January 1, 1993 are within a 160-acre square centered on the center of the subject tract. Under Subsection (bb) of this standard, the applicant must demonstrate that there were three dwellings that existed on January 1, 1993 and continue to exist that are located within the 160-acre square template that is centered on the subject tract.

The allegations of error raised by the Appellant in its appeal are as follows:

The subject property does not appear to be a legal lot.

The subject property is Parcel 1 of Partition M 212-79. Confusion has arisen because the County failed to record the final partition map once the conditions of approval were satisfied in a timely manner. When this fact was pointed out to the County and confirmed by County staff, the County recorded the final partition map. Notice of this final action was not required as this was not a land use decision.

The subject property was subject to a 1999 property line adjustment. This adjustment did not reconfigure the property to the extent that it then qualified for the siting of a dwelling. The subject property was also subject to a 2005 property line adjustment (PA 05-6544) which did not adjust boundaries as much as it verified and formalized the property line boundary between it (tax lot 402) and tax lot 401, the adjacent parcel to the south. The adjustment did not change the boundaries or acreage of either parcel but rather clarified the legal description of the boundary between them.

This allegation of error is dismissed

The eleven-parcel count required by Lane Code 16.211(5)(c)(iii)(aa) has not been met.

The Appellant's position regarding the applicability of *Parsons v. Clackamas County*, 32 Or LUBA 147 (1996) to the current application was made clear, I think, in its June 16, 2016 submission. In its cover memorandum, the Appellant opined that while the "date of creation and existence" interpretation of *Parsons* does not apply to the "subject parcel in a template dwelling proposal" it does apply to the parcel count. If the Appellant means that the November 1, 1993 date threshold of OAR 660-06-005(5) applies, then I do not agree. OAR 660-006-0027(3) provides the specific date of January 1, 1993 as to when a countable parcel must have been in existence.

Whether the full restrictions of the definition of "Date of Creation and Existence" in OAR 660-06-005(5) can be inferred to apply to the term "existence" as it is used in Lane Code 16.211(5)(c)(iii)(aa) and OAR 660-006-0027(3)(c)(A) is in dispute. Essentially then, the Appellant argues that a parcel within the 160-acre template cannot be counted to have been in existence if (1) it was subject to a reconfiguration, such as a property line adjustment and (2) that adjustment changed the status of the parcel so that it would then qualify for the siting of a dwelling. I am not sure that the ability of a parcel to site a dwelling is a reasonable interpretation since a different provision in the template dwelling test focuses on the number of parcels with a dwelling that existed on January 1, 1993.

Nevertheless, I believe the parcels objected to by the Appellant can withstand this conservative interpretation.

The Appellant asserts that less than eleven lots or parcels existed in the template area on January 1, 1993. In specific, the Appellant alleges:

1. *Tax lots 310 and 311, assessor's map 19-15-30 are not one parcel and cannot be counted as one as they were new parcels created by partition in 1999.*

Tax lot 300, assessor's map 19-15-30 is the parent parcel of tax lots 310 and 311 and only tax lot 300 as it existed in 1993 is being counted. Tax lot 300 was created by a deed in 1965¹ and was verified as a legal lot in 1997 through PA 902-97. The partition that occurred in 1993 and that created the two tax lots is not being counted as adding a new parcel to the template square after January 1, 1993. The Appellant seems to be arguing that the 1993 partition made tax lot 300 ineligible to be counted as it was reconfigured through the partition with a resulting additional parcel eligible for a dwelling. I think this is an overly narrow interpretation of OAR 660-06-005(5) and not one that can be rationally implied from an inquiry into whether a parcel existed on January 1, 1993. Thus, Lane Code 16.211(5)(c)(iii)(bb) and OAR 660-006-0027(3)(c)(B) not only require that the countable dwellings have existed on January 1, 1993 but that they also "continue to exist." The lack of this type of modifying language would seem to indicate that being in existence on January 1, 1993 is sufficient for a parcel and its subsequent reconfiguration is irrelevant. Even if the Appellant's interpretation is valid and this parcel cannot be counted, the Applicant still has at least eleven countable parcels within the template square.

2. *Tax lot 309 was a new parcel as of 1997.*

Tax lot 309 was created as Parcel 2 of partition PA 3033-88. This parcel has been in its current configuration since 1990.

3. *Tax lot 312 was created in 1999 by deed "99-071896..*

Tax lot 312 was created as Parcel 1 of Partition PA 3033-88. Prior to 1990 in Lane County, partitions were approved using a partition map and no tax lot number was assigned until the property was sold.² The subsequent 1999 transfer of ownership resulted in the assignment of new tax lot number to the partitioned parcel but did not represent a new division of land.

¹ Lane County Deeds & Records, R259D, Instrument #92314.

² Subsequent to 1990, partitions were approved through the platting process and a filed plat resulted in the assignment of a tax lot number.

4. *Tax lots 313 and 305 are new parcels created from 2011 property line adjustments.*

The parcel from which these tax lots were cleaved was created by deed in 1966.³ Neither of these tax lots, which were created after January 1, 1993, are relied upon by the Applicant in his template test.

5. *Tax lot 402 was created as a separate parcel on August 17, 1999.*

This parcel is not relied upon by the Applicant in his template test.

6. *Tax lots 402, 306, 303 and 312 were subject to the conveyance of acreage in 1999 by Warranty Deed #071896, filed (recorded?) in 2002.*

Tax lots 402, 306 and 303 were not relied upon by the Applicant in his template test. See sub-allegation #3, above, regarding tax lot 312.

7. *Tax lot 900 was reconfigured by a property line adjustment in 2006.*

Although the common borders of tax lot 900 and 1000 were adjusted in 2006, the parcel configuration that was tax lot 900 was and currently is within the template boundaries. Tax lot 900 was created by deed in 1959 and was verified as a legal lot in 2001 via PA 01-5785. The 2006 property line adjustment did not change the developable status of either tax lot 900 or 1000.

These allegations of error are dismissed

Conclusion

The subject property qualifies for a template dwelling as the partition through which it had been created was not recorded in a timely manner (prior to January 1, 1993) due to a County error. In addition, the Applicant has demonstrated that three dwellings and eleven parcels within a 160-acre square centered on the subject property existed as of January 1, 1993.

I believe that many if not all of the “date of existence” problems identified the Appellant were due to confusion between the legal status of a parcel and its tax lot number. As explained in Finding of Fact #4, prior to 1990 partitions in Lane County were not done with recorded plats nor were legal descriptions required to be recorded at the time a parcel was created. Thus, the newly created parcels would not be tracked by the Lane County Department of Assessment of Taxation until they were conveyed; often at a later date. The date of existence of a parcel is the date that it was created by partition, not the date when a tax lot was assigned.

³ Lane County Deeds & Records, R288D, Instrument #49377.

For the reasons explained above, I conclude that the Applicant has satisfied the applicable requirements of Lane Code 16.211(5).

Respectfully Submitted,



Gary Darnielle
Lane County Hearings Official



July 12, 2016

Ms. Lydia McKinney, Manager
Land Management Division
3050 N. Delta Highway
Eugene, OR 97408

Re: Appeal of Hearings Official decision affirming the Planning Director's approval of the Sayre' request (PA 15-05777) for a template forest dwelling on tax lot 402, assessor's map 19-15-30.

Dear Ms. McKinney:

On June 27, 2016, I affirmed the Planning Director's approval of the Terry Sayre request (PA 15-05777) for a template forest dwelling on tax lot 402, assessor's map 19-15-30. On July 11, 2016 LandWatch Lane County appealed my decision. Upon a review of this appeal, I find that the allegations of error have been adequately addressed in that decision and that a reconsideration is not warranted.

Accordingly, on the authority of Lane Code 14.535(1), I shall affirm my June 27, 2016 decision without further consideration. Please advise interested parties of this decision.

Sincerely,

Gary L. Darnielle
Lane County Hearings Official

cc: Amber Bell (file)