

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 19-01-29-05 In the Matter of Electing Whether or Not to Hear an Appeal of a Hearings Official Decision Affirming the Planning Director's Decision to Approve a Replacement Dwelling in the Exclusive Farm Use Zone (E-40) on Tax Lot 1400, Assessor's Map 20-05-13 (File No. 509-PA17-05908; Doughty)

WHEREAS, the Lane County Hearings Official has made a decision to affirm a Planning Director's approval of a replacement dwelling on Tax Lot 1400, Assessor's Map 20-05-13; and

WHEREAS, the Lane County Planning Director has received an appeal of the Hearings Official's decision to the Board of County Commissioners pursuant to LC 14.080(4)(d)(ii) and (vi), requesting that the Board elect not to further hear the appeal and to deem the Hearings Official decision the final decision of the County; and

WHEREAS, on November 26, 2018, the Lane County Hearings Official affirmed his November 8, 2018 decision on the application after reviewing the appeal; and

WHEREAS, Lane Code 14.080(4)(d) provides the procedure and criteria that 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, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. That the appeal complies with the criteria of Lane Code 14.080(4)(d)(iii) and therefore, the Board will review the appeal and consider arguments therein in an on the record hearing. Findings of fact in support of this determination are attached as Exhibit "A."
2. An on the record hearing is set for February 26, 2019, and the parties who may participate in the Board on the record hearing are detailed in Lane Code 14.080(4)(d)(vii)(gg), and include the Director, the applicant and applicant's representative – Duane and Tonya Doughty and Thom Lanfear, and the appelland and the appelland's representative – LandWatch Lane County and Sean T. Malone.

ADOPTED this 29th day of January, 2019



Pete Sorenson, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date

1-15-19

LANE COUNTY OFFICE OF LEGAL COUNSEL

ORDER EXHIBIT "A"

FINDINGS IN SUPPORT OF THE ORDER

1. Findings herein are provided for the appeal of Department File No. 509-PA17-05908.
2. Notice of the November 7, 2018 Hearings Official's decision was mailed to the applicant and parties of record on November 8, 2018.
3. On November 19, 2018, Sean T. Malone, representing LandWatch Lane County, 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 14.080(4)(d)(ii).
4. On November 26, 2018, the Hearings Official reviewed the appeal and affirmed his decision without further consideration, pursuant to LC 14.080(4)(b).
5. A decision by the Board to hear the appeal on the record must conclude that a final decision by the Board can be made within the time constraints established by ORS 215.427. In this case, the applicant's agent has provided a full waiver of the statutory timeline requirements. Therefore, a final decision by the Board through holding an on-the-record hearing can be made within the time constraints of ORS 215.427.
6. In order for the Board to hear arguments on the appeal, Lane Code 14.080(4)(d)(iii) requires the appeal to comply with one or more of the following criteria:
 - *The issue is of countywide significance;*
 - *The issue will reoccur with frequency and there is a need for policy guidance;*
 - *The issue involves impacts to an inventoried Goal 5 resource; or*
 - *The Director or Hearings Official recommends review.*

The issues raised in the appeal statement are largely specific to the application. More specifically, the appellant asserts that the Hearings Official did not apply the correct Lane Code approval criteria to this proposal for a replacement dwelling. The applicant applied for a replacement dwelling under Lane Code 16.212(5)(b) and the Planning Director approved the application based on that approval criteria. The Hearings Official affirmed the Planning Director's decision, but in the Hearings Official's decision, the first allegation of error is that the Planning Director addressed the wrong approval criteria in the Director's decision. The Hearings Official addressed what he believed to instead be the correct approval criteria at Lane Code 16.212(5)(a) and otherwise affirmed the Planning Director's decision. The appellant raises this issue, indicating that there is no evidence in the record that the proposal meets the approval criteria at Lane Code 16.212(5)(a) as found by the Hearings Official.

Further, the appellant raises an issue regarding the applicable siting standards of Lane Code 16.212(10)(a). The Big Game Habitat designation of the subject property determines if Lane Code 16.212(10)(a)(i) or 16.212(10)(a)(ii) is the correct criteria to be applied. The Hearings Official made findings that subsection (i) does apply to the proposal and the appellant argues that this finding is in error, not supported by substantial evidence, and misconstrues applicable law.

Other issues raised in the appeal statement include the legal lot status of the subject property and how the proposal meets the siting criteria in Lane Code 16.212(10). On November 26, 2018, the Hearings Official reviewed the allegations and affirmed his decision.

Based on the above summary of the issues, the Planning Director does not believe that the implications of the decision are of countywide significance, that the issues will occur with frequency, or that there is a need for policy guidance. To the extent that the issues will occur with frequency, the Hearings Official's decision or any forthcoming LUBA opinion would provide guidance.

7. The issues raised in this appeal do not relate to, or involve a Goal 5 inventoried environmental resource. Issues raised in this appeal relate to provisions of Lane Code 16.212(5)(b) and (10), Chapter 462 Oregon Laws 2013, OAR 660-033-0130(8), and ORS 215.213(1)(q) and (9).
8. The Planning Director concurs with the appellant that the incorrect approval criteria was applied by the Hearings Official when Lane Code 16.212(5)(a) was applied to the proposal instead of Lane Code 16.212(5)(b). Therefore, the Planning Director recommends that the Board elect to hear the appeal and conduct an on the record hearing pursuant to Lane Code 14.080(4)(d)(vii)(aa). This action will allow the Board to consider only the evidence confined in the record. The parties who may participate in the Board on the record hearing are detailed in Lane Code 14.080(4)(d)(vii)(gg), and include the Director, the applicant and applicant's representative – Duane and Tonya Doughty and Thom Lanfear, and the appellant and the appellant's representative – LandWatch Lane County and Sean T. Malone.
9. To meet the requirements of Lane Code 14.080(4)(d)(ii), 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. The Board has reviewed this matter at its meeting on January 29, 2019, finds that the appeal does comply with the criteria of Lane Code Chapter 14.080(4)(d)(iii) and elects to hold an on the record hearing for the appeal.
10. The Board therefore elects to conduct an on-the-record hearing in which the Board will consider evidence confined to the record, and sets an on the record hearing for February 26, 2019.