

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 20-02-04-01

In the Matter of Denying an Application on Remand from LUBA to Amend the Lane County Rural Comprehensive Plan (RCP) to Redesignate Land From "Forest (F) Land" to "Non-resource (NRES) Land" and Rezone that Land From "Impacted Forest (F-2, RCP) Land Zone" to "Rural Residential (RR-5/NRES, RCP) Lands Zone" for a 131.55 Acre Property, Along with a Site Review (SR) Suffix (Original File No. 509-PA15-05722 and Remand File No. 509-PA19-05724; Applicant Gimpl Hill Properties, LLC.)

WHEREAS, application file No. 509-PA15-05722 was made for a minor plan amendment request to redesignate tax lot 2200, Map 18-04-17, from "Forest (F) Land" to "Nonresource (NRES) Lane," with a concurrent request to rezone that land from "Impacted Forest (F-2) Land" to "Rural Residential (RR-5/NRES, RCP) Lands Zone; and

WHEREAS, the Lane County Planning Commission reviewed the proposal in public hearings on February 7, 2017 and May 16, 2017, and following deliberations on July 18, 2017, voted 5-3 to recommend denial of the request to the Board of Commissioners; and

WHEREAS, in response to the Planning Commission's majority recommendation, the applicant reduced the number of additional lots that could be created and modified the development proposal; and

WHEREAS, the Board of Commissioners conducted a public hearing on June 5, 2018, deliberated on August 21, 2018, and voted 4-0 to approve the application through enactment of Ordinance No. PA 1360; and

WHEREAS, the County's decision was appealed to LUBA and on May 22, 2019, LUBA issued an opinion and order remanding the decision to Lane County on two specific issues relating to Oregon Statewide Planning Goal 4 and 5 compliance; and

WHEREAS, the applicant submitted a request to the County to begin formal remand proceedings on September 16, 2019, identified as remand Department File No. 509-PA19-05722; and

WHEREAS, on December 17, 2019, the Board of Commissioners held an on-the-record hearing and voted 5-0 to deny the application, and directed staff to prepare appropriate findings.

WHEREAS, the Board of Commissioners of Lane County is now ready to take action.

NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. That application identified as Department File No. 509-PA19-05722 to approve the plan amendment and zone change on remand is denied for the reasons set forth in Exhibit "A".

FURTHER, the Board of Commissioners adopts Findings and Conclusions as set forth in Exhibit "A" attached and incorporated here by this reference, in support of this action.

ADOPTED this 4th day of February, 2020.

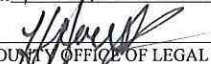


Heather Buch, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date

1-29-2020



LANE COUNTY OFFICE OF LEGAL COUNSEL

EXHIBIT A
FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THE
MATTER OF FILE NO. 509-PA19-05724

I. Proposal Description

- A. Owner/Applicant: Gimpl Hill Properties, LLC.
Agent: Mike Gelardi, Gelardi Law P.C.

- B. Proposal: In the Matter of Denying an Application on Remand from LUBA to Amend the Lane County Rural Comprehensive Plan (RCP) to Redesignate Land From “Forest (F) Land” to “Non-resource (NRES) Land” and Rezone that Land From “Impacted Forest (F-2, RCP) Land Zone” to “Rural Residential (RR-5/NRES, RCP) Lands Zone” for a 131.55 Acre Property, along with a Site Review (SR) Suffix, (Original File No. 509-PA15-05722 and Remand File No. 509-PA19-05724; Applicant Gimpl Hill Properties, LLC.)

II. Effect of Findings

The Board adopts these findings in support of its order denying the application on remand from the Land Use Board of Appeals (LUBA No. 2018-109). As detailed below, the Board is acting on remand in this matter.

III. Background

A. Summary

While Lane County originally approved the requested Plan Amendment, the application was appealed to LUBA. On May 22, 2019, LUBA issued an opinion and order (*Bob Cattoche et al. v Lane County*, OR LUBA No. 2018-109) remanding the decision to Lane County.

The basis for Lane County’s review regarding the remand was limited to the items sustained by LUBA. The scope of the remand proceedings identified by the LUBA remand are addressed in the Sections below and include:

- 1. Goal 4 Compliance
- 2. Goal 5 Compliance (with two sub-issues)
 - A. Big Game Range
 - B. Groundwater Supply

B. Board Action and Other History

1. A privately initiated Rural Comprehensive Plan Amendment and concurrent Zone Change application (Planning File 509-PA15-05722) was submitted to the Land Management Division on October 15, 2015. The application included a request for a Plan Amendment to redesignate land from “Forest (F) Land” to “Non-Resource (NRES) Land” and a zone change to rezone land from “Impacted Forest (F-2) Land to “Rural Residential (RR-5) Zone” along with a Site Review (SR) Suffix.
2. The Lane County Planning Commissions (LCPC) conducted public hearings on February 2, 2017 and May 16, 2017, and deliberated on July 18, 2017. The LCPC voted 5-3 to recommend denial of the request to the Board of Commissioners. In response to the Planning Commission’s majority recommendation for denial and a significant amount of testimony that was submitted by neighbors and others addressing the groundwater issue, the applicant modified their request to reduce the number of additional residential lots that could be created if the Plan Amendment/Zone Change was approved.
3. The Lane County Board of Commissioners conducted a public hearing on June 5, 2018 and deliberated on August 21, 2018. The Board voted 4-0 (Commissioner Sorenson excused) to approve the application under Ordinance No. PA 1360.
4. Lane County’s decision was appealed to LUBA and on May 22, 2019, LUBA issued an opinion and order remanding the decision to Lane County on two specific issues related to Goal 4 and Goal 5 compliance.
5. On September 16, 2019, the applicant submitted a request for the County to begin formal remand proceedings.
6. On December 3, 2019, the Board held a first reading and on December 17, 2019, the Board held a second reading and an on-the-record hearing on a proposed ordinance. After conclusion of the hearing, the Board voted 5-0 to deny the application and directed staff to prepare and order denying the application with appropriate findings for adoption on February 4, 2020.

IV. Statewide Planning Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces

A. Big Game Analysis

On appeal to LUBA, petitioners argued that the County failed to conduct the necessary Economic, Social, Environmental, and Energy (ESEE) analysis and LUBA agreed. LUBA stated the county is, “*required to show its work,*” and “*follow the ESEE analysis required by OAR 660-023-0250 as prescribed in OAR 660-023-0040.*” Therefore, in response to this remand item, the applicant’s agent conducted an ESEE and provided it as part of the remand application request.

The Board concludes that while OAR 660-023-0040 gives local governments broad discretion regarding the scope of the ESEE analysis to achieve the goal, it does not allow local governments to adopt an analysis that ignores key points in the rule. Conducting an ESEE is a four step process as described below. The applicant's submitted ESEE appears to be insufficient in some portions of the analysis as follows:

1. The applicant's analysis under Step 1 (OAR 660-023-0040(2)), identify conflicting uses, does not appear to fully identify or compare the range of existing and potential conflicts that could occur which could impact Big Game resources in the F-2 and RR zones. Per the LUBA opinion, LUBA stated the ESEE analysis should: 1) evaluate whether the change in zoning from F-2 to RR introduces the potential for new conflicting uses which might conflict with Big Game, 2) identify the level of residential density allowed in the F-2 zone and compare that density to the level of development in the RR zone, and 3) determine whether development with single family dwellings represents the most likely potential conflict under either the forest or residential zoning.
2. The applicant's analysis under Step 2 (OAR 660-023-0040(3)), determine the impact area, does not address which Big Game animal populations exist within the one mile identified impact area.
3. The applicant's analysis under Step 3 (OAR 660-023-0040(4)), analyze the ESEE consequences must address the positives and negatives of allowing, limiting or prohibiting a conflicting use. The Board finds that the applicant's analysis in this part of the ESEE was insufficient to provide a clear understanding of the ESEE consequences. For example, there is no discussion addressing consequences of allowing or limiting the use of a school, golf course, or other uses that would be allowed in the proposed zoning as a conflicting use.
4. The applicant's analysis under Step 4 (OAR 660-023-0040(5)), program to achieve Goal 5 compliance does not enable the Board to clearly identify how the program to achieve Goal 5 is being met. The applicant's findings do not explicitly list the proposed mitigation measures or what conditions of approval reduce the conflicts to Big Game. The Board concludes any findings need to clarify the program being proposed and explicitly cite or list specific mitigation measures and/or conditions of approval that support the program to achieve Goal 5 consistency.

As stated above, the Board finds the applicant's ESEE does not examine key points of the rule. Therefore, the Board is unable to adopt the applicant's ESEE analysis.

LUBA also ruled in its remand decision that the Big Game Residential Density Standard is a local standard and the Board's interpretation of that standard is entitled to deference on appellate review. As part of that interpretation, the Board found that the Residential Density Standard required only consideration of the subject property

and not surrounding properties. The Board reiterates these earlier findings here. However, because the findings above concerning the deficiencies of the ESEE analysis required that the Board deny the application, the Board need not make further findings relating to the Residential Density.

B. Groundwater Supply

Lane County's Water Resources Working paper conflict resolution provides:

"For quantity limited aquifer otherwise acceptable development should be allowed if an adequate showing is made that water will be available for a foreseeable period in the future and that the additional withdrawal will not negatively impact surrounding users."

Petitioners before LUBA argued that the findings only considered the first part of this groundwater provision and failed to adequately address under the Goal 5 analysis how the additional withdrawal of water will not negatively impact surrounding uses. LUBA agreed the findings needed to address the impacts to neighboring wells and address the competing evidence concerning the groundwater issue.

Consistent with the LUBA opinion, the Board acknowledges that the applicant needs to address the water usage impact to surrounding users. The applicant's proposed amended findings and written argument contain additional analysis addressing LUBA's basis for remand relating to groundwater supply. However, because the Board bases its denial on the insufficiency of the ESEE analysis and the Goal 4 issues discussed below, the Board does not make specific findings with respect to the competing evidence relating to the adequacy of groundwater supply for Goal 5 purposes.

V. **Statewide Planning Goal 4, Forest Lands**

LUBA's remand stated the County's original findings did not address whether the property must remain in forest zoning and evaluate whether the property must remain in forest zoning in order to protect soil, air, water and fish and wildlife resources. Petitioners argued that the property should be characterized as forest land and managed to protect those resources. The County originally concluded that because the subject property was not "predominantly forested lands," the property was not needed to maintain soil, air, water, and fish and wildlife resources. LUBA found that this was not the correct or sufficient evaluation standard for this part of the Goal 4 test.

Therefore, in response to this remand item, the applicant's agent submitted amended findings as part of the remand application request. The applicant stated that forest zoning is not necessary to protect wildlife. As described in their findings, the applicant stated some uses in the F-2 zone may be harmful to wildlife and rezoning the property to RR-5 precludes some of those uses. However, the applicant's amended findings

did not explicitly list what uses in the F-2 zone are harmful and what specific uses are precluded if the property is zoned RR, nor has the applicant provided a comprehensive comparison of uses allowed in the F-2 and RR zones. The applicant asserts that Gimpl Hill's proposed CC&Rs further restrict uses that could impact wildlife, such as limiting use of machinery and presence of domestic animals. However, the applicant's amended findings do not explicitly explain how the restricting of outdoor animals would mitigate impacts to big game.

LUBA's remand stated the County's initial decision does not clarify how the decision ensures no disturbance to wetlands. The applicant's amended findings address how the proposed application protects wetlands because it limits development on property and directs the permitted development away from wetlands. However, it is not clear that the applicant's discussion on "wetlands" relate to the applicability of the "water" resource in this criteria or that the applicant has adequately addressed the "water" prong of the other forest lands test.

Additionally, LMD planning staff requested the applicant address the full range of resources in a supplemental submittal. This is because the LUBA remand required the county to address the listed features (soil, air, water and fish and wildlife resources) and the applicant's proposed amended findings did not address soil, air, and fish resources. The applicant's proposed revised findings submitted on November 12, 2019 assert that while the Board is not required to consider these resources, if in the alternative the Board finds they apply, the applicant has provided additional findings. However, it is the County's understanding that the LUBA remand specifically directed the County to address all the listed resources in order to conclude that the forestry zoning is not necessary to maintain soil, air, water, fish, and wildlife. The Board is required to consider the full range of these resources with the inclusion of less broad supplemental findings. Absent findings that fully address and respond to specific issues relevant to Goal 4 compliance, the Board is unable to adopt the applicant's proposed amended findings.

VI. Conclusion

For the reasons stated above, the Board finds that the application does not satisfy all the applicable approval criteria and is therefore unable to adopt the applicant's amended ESEE and other proposed findings. Accordingly, the Board hereby denies the application.