

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 15-05-05-11 In the Matter of an Appeal to the Board of Commissioners of a Hearing Official's Decision Denying a Request for Home Occupation Special Use Permit for an Events Venue for Weddings, Retirements, Anniversaries, Graduations, Banquets, Family Renuions, Meetings, Dinners and Gatherings Within the Impacted Forest Lands (F-2) Zone Under Lane Code Ch. 16.211(3)(n). Map T18-R05-S06-40 Tax Lot 101 (File No. 509-PA14-05360/Owner/Applicant Andrew Head).

WHEREAS, the Lane County Planning Director denied a request for a Home Occupation in the Impacted Forest Lands Zone under Lane Code 16.211(3)(n), Map T18-R05-S06-40, Tax Lot 101, File No. 509-PA14-05360; and

WHEREAS, on appeal from the Planning Director's decision the Lane County Hearings Official denied a request for a Home Occupation in the Impacted Forest Lands Zone under Lane Code 16.211(3)(n), Map T18-R05-S06-40, Tax Lot 101, File No. 509-PA14-05360; and

WHEREAS, the Lane County Planning Director received two separate appeals of the Hearings Officials Decision to the Board of County Commssioners under LC 14.515(3)(f)(ii) and LC 14.515(3)(f)(ii); and

WHEREAS, the Lane County Hearings Official affirmed his decision on the application after reviewing the appeal in File No. 509-PA14-05360; and

WHEREAS, Lane Code 14.600 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 determined that the criteria were met and held an on the record hearing on April 21, 2015, for the appeal; and

WHEREAS, the Applicant/Appellant provided a written declaration in his appeal agreeing to waive the statutory timeline in ORS 215.427(1) through June 2, 2015, to allow for a final County decision and the County accepts this as his timeline waiver; and

WHEREAS, the Board conducted an on the record hearing on May 5, 2015, and further deliberated on May 19, 2015, and voted unanimously to affirm and adopt the Lane County Hearing Official's March 2, 2015 decision as the County's final decision, and to remain silent on the Hearings Official's interpretations of the Rural Comprehensive Plan policies and implementing ordinances made by the Hearings Official in the decision; and

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

1. That the appeal complies with the criteria of Lane Code 14.600(3) and the appeal should be considered in an on the record hearing. Findings in support of this decision are attached as Exhibit "A."
2. That the Lane County Hearing Official's Decision dated March 2, 2015, and letter affirming the decision, attached as Exhibit "B", is affirmed and adopted as the County's final decision, the Board remaining silent on the Hearings Official's

Interpretations of the Rural Comprehensive Plan policies and implementing ordinances in his decision.

ADOPTED this 2nd day of June, 2015.



Jay Bozievich, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 5/26/15



LANE COUNTY OFFICE OF LEGAL COUNSEL

ORDER EXHIBIT "A"

FINDINGS IN SUPPORT OF THE ORDER

1. The subject property is identified as tax lot 101 assessor's map 18-05-06-40. The approximate 40 acre subject property is located east of the city of Veneta and north of Fleck Rd at address 25519 Fleck Rd. The property is developed with one dwelling, septic system, well, two agricultural buildings (one of which is named Pavilion), gazebo, a 30'x30' structure not listed on the site plan, and a 25'x25' structure called the pond house. All of the subject property is designated Forest in the Rural Comprehensive Plan and zoned Impacted Forest Lands (F-2) Zone.
 2. The application for a Special Use Permit Home Occupation was submitted to the Planning Department on June 13, 2014. The proposed Home Occupation is to conduct an events venue for weddings, retirements, anniversaries, graduations, banquets, family reunions, meetings, dinners and gatherings. The applicant proposes two categories for events: Main Events and Floating Events.
 3. On October 31, 2014, the Planning Director issued a denial of the request and the decision was appealed by the applicant in a timely manner on November 17, 2014.
 4. On January 8, 2015, the Hearings Official held an evidentiary hearing. The record was held open for new information until January 22, 2015, record closed for responses to new information on January 29, 2015, and then the record closed for final applicant rebuttal on February 5, 2015.
 5. The Hearings Official issued his decision of denial on March 2, 2015, affirming the Planning Director's Decision denying the application.
 6. Two appeals of the Hearing's Official decision were submitted:
 - a. On March 16, 2015, Kim O'Dea, representing the applicant, Andrew Head, filed an appeal pursuant to Lane Code 14.515(3)(f)(i), requesting that the Hearing's Official reconsider or the Board of Commissioners Review the appeal in a Hearing on the record.
 - b. On March 16, 2015, Sean Malone, representing LandWatch Lane County et al., filed an appeal pursuant to Lane Code 14.515(3)(f)(ii), requesting that the Board not conduct a hearing on the appeal and deem the Hearing's Official the final decision of the County.
- The allegations of error were listed in the separate appeal statements.
7. On March 23, 2015, the Hearings Official affirmed his decision of denial.
 8. In order for the Board to hear arguments on either appeal, Lane Code 14.600(3) requires one or more of the following criteria to be found by the Board to apply to the appeals:
 - *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.*
 9. The Board reviewed this matter at its meeting on April 21, 2015, and found that some of the appeal issues are of countywide significance and will reoccur with frequency, and adopted an order electing to have a hearing on the record.
 10. Under Lane Code 14.600(3), 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 in ORS 215.427(1). The applicant/appellant provided a written declaration in their appeal agreeing that if the Board elected to hear the appeal, the applicant would waive the statutory timeline for a final County decision, so that the final decision by the Board can be made within the time constraints established by ORS 215.427(1). The County accepts this as the applicant's timeline waiver.

11. The Board held an on the record hearing on May 5, 2015, and heard arguments from the appellants during the hearing. The record and public hearing was closed at the public hearing. During the hearing, the applicant/appellant's agent agreed June 2, 2015, was the extended deadline date for the County to make its final decision.
12. The Board deliberated on the matter on May 19, 2015, and voted unanimously (4-0) to affirm and adopt the Lane County Hearings Official decision dated March 2, 2015, as the County's final decision, and to remain silent on the Hearings Official's interpretations of the Rural Comprehensive Plan policies and implementing ordinances made by the Hearings Official in the decision.
13. The Board intends to adopt this order at their June 2, 2015 consent calendar meeting.

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DO NOT
SEPARATE
PACKET

CERTIFICATE OF MAILING

509-PA14-05360
HEAD
3-3-2015

This is to certify that I, Chris Rogers, mailed Notification of

NO DECISION

To the person(s) shown on the attached copy of mailing labels &/or attached letter, and delivered said information to the authorized agent for the us Post Office in Eugene, Oregon on

DATE MAILED: 3-3-2015

END OF COMMENT PERIOD: _____

APPEAL DEADLINE: 3-16-15


CHRIS ROGERS

NOTE: Surrounding property owners listed are "the owners of record of all property on the most recent property tax assessment rolls" on RLID as per Lane Code 14.300(3)(d). If a tax lot appears on the notice list & there are no corresponding addresses then the tax records have not been updated; therefore, these property owners were not notified.

**LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR APPROVAL OF A HOME OCCUPATION
TO ALLOW INDOOR WEDDINGS, CORPORATE RETREATS, AND
CATERING/BANQUETS WITHIN THE F-2 DISTRICT**

Application Summary

Andy Head, 25519 Fleck Rd. Veneta, OR. Appeal of a October 31, 2014 Planning Director denial of a home occupation (PA 14-05360) to conduct an events venue for weddings, retirements, anniversaries, graduations, banquets, family reunions, meetings, dinners and gatherings within the Impacted Forest District (F-2) on tax lot 101, assessor's map 18-05-06-40.

Parties of Record

Andrew Head	Grace Hart	Jay Thompson
Katherine Connell, DVM	Karrelly & Tim Payne	Jeff Alden
Rindy & Cody Spicer	Valerie & Steve Dillion	John & Terry Nicholas
William Linn	Steve & Valerie Dillon	David Biggs
Jerry & Betsy Hauenstein	David & Tracy Engholm	Jan Hall
Grace Hart	Daniel & Heather Redwine-Walter	
Katherine & Jay Thompson	James Long	Nola Stone
Lonnie Huddleston	Dennis & Darlene Payne	Ben Spicer
Leslie Robinet	Sean Malone	John McCallum
LandWatch Lane County	Robert Emmons	Jenny Tocalino
Dept. of State Lands	James Kinch, BPA	

Application History

Hearing Date: January 8, 2015
(Record Held Open Until February 5, 2015)

Decision Date: March 2, 2015

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. That appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

Lane County Rural Comprehensive Plan
Lane Code 16.211(3)(n)

Lane Code 16.211(8)

Findings of Fact

1. The property subject to this application, hereinafter referred to as "the subject property," has an address of 25519 Fleck Rd. Veneta, OR and can also be identified as tax lot 101 of Lane County Assessor's Map 18-05-06-40. The 39.61-acre property is located south east of the City of Veneta and north of Fleck Road. The property is currently designated and Planned Forest in the Lane County Rural Comprehensive Plan and is zoned Impacted Forest Lands (F-2) Zone), consistent with the Plan designation.

Development on the subject property includes a dwelling, septic system, well, two agricultural buildings: south agricultural structure (permitted under permit 509-PA 09-05096) located 200' east of the dwelling, and north agricultural structure (permitted under permit 509-PA13-05645) proposed as the Pavilion located 360' north east of the dwelling, a private gazebo (unknown location and not depicted on site plan), an approximate 30'x 30' building located 160' northeast of the dwelling (not depicted on the site plan), an approximate 25'x 25' structure with decks located 345' north of the dwelling (portable pond house not depicted on the site plan), and an approximate 20'x 14' structure, called the pump house, located just south east of the dwelling but not depicted on site plan.

The subject property can be divided into three segments; southern, central, and northern. The property is covered with fir tree stands in the central and northern part of the property. In the northern portion of the property a BPA easement (over 200' wide) bisects the property situated generally east/west. Near the subject property dwelling off of Fleck Rd. there are some open grasslands and cleared areas to the north and east.

A seasonal creek bisects the property located parallel with the south tree line from the south west boundary to the north east boundary exiting to Tax Lot 103 as shown in the USGS Map and visible in the small scale 2013 aerial map. A pond is visible located before the creek exits to Tax Lot 103 as shown in the 2013 aerial map.

2. The request is a for a Special Use Permit Home Occupation for an events venue for weddings, retirements, anniversaries, graduations, banquets, family reunions, meetings, dinners and gatherings. The applicant proposes two categories for events: Main Events and Floating Events.

Main events are proposed as follows: limited to 250 people, to occur on Fridays and Saturdays, with only one event per day. Events will start no earlier than 10:00 a.m. and music will end by 11:00 p.m. All guests, caterers, and music providers will be off the property by 11:00 p.m. All lights associate with the event will be turned off by 11:30 p.m. Clean up will end by 11:30 p.m.

Floating events are proposed as follows: to occur on two days per week (days may differ each week), no more than one floating event per day (Sundays included as indicated in letter to file dated October 3, 2014). Floating events consists of three categories:

- a. Evening floating events limited to 250 people, will start no earlier than 4:00 p.m. Music will end by 11:00 p.m. All guests, caterers, and music providers will be off the property by 12:00 a.m. All lights associated with the event will be turned off by 12:00 a.m. Clean-up will end by 12:00 a.m.
- b. Afternoon floating events limited to 25 people, will be between the hours of 11:00 a.m. and 2:30 p.m. No music will be allowed. All guests caterers will be off the property by 2:30 p.m.
- c. Sunday events limited to 250 people, will start no earlier that 12:00 p.m. Music, when used, will end by 8:00 p.m. All guests, caterers, and music providers will be off the property by 9:00 p.m. Clean-up will end by 9:00 p.m.

If there is an afternoon event on Monday and an evening event on Sunday, the allotted two days a week are used up for that week. A floating event and a main event will not occur on the same day. Based on the proposal in any given week there is a maximum of four events. Not all events include music or large crowds as indicated in the application.

The home occupation will be operated by Andrew Head, the resident of the property. He lives on the subject property and will own and operate the events venue. The Applicant warrants that there will be no more than five contractors will be on-site at any one time. The contractors may consist of a caterer, server, florist, DJ, bar tender, clean-up staff and parking attendants, and others.

The home occupation will utilize an existing "Pavilion" and pond house. Although there are other structures located on this subject property, only the Pavilion and pond house will be used for the events venue business operation. The Pavilion was approved as an agricultural building under planning permit 509-PA13-05645 and occupies 3,800 square feet. The distance of the Pavilion to the existing dwelling on the subject property is approximately 200'.

The Pavilion has a concrete floor and chandeliers hanging from its roof. It is partially walled and partially enclosed in that the North wall will have floor-to-ceiling glass (with glass framing as needed) with a pair of 20 foot wide sliding glass doors located under the dormer area. The South side-wall will be floor-to-ceiling stick framed with interior drywall and exterior sheathing. The East and West side-walls will have floor-to-ceiling glass (with framing as needed) with a pair of 16-20 foot wide sliding glass doors.

Temporary port-o-potties will be self-contained flushing port-o-potties with washing stations that are handicap accessible. They will be located on the south side of the pavilion. Proposed improvements to the pavilion include two restrooms, two changing rooms, and a "kitchen" prep area; all located on its south side. The kitchen prep area will

not have a stove or 220 watt power and all food will be catered. The port-o-potties will be removed when the restrooms are built.

The pond house was located on the property when first purchased by the Applicant. It was moved to its current site in 2014. It proposed to be used to house a present table, wedding photo site, and guest book area.

Some events will utilize an outdoor ceremony site located north of the pond. The site will have no power but is occupied by wooden benches. The only music used at this site will be either a battery-powered, portable CD player or a single-person acoustical instrument such as a violinist. Outdoor ceremonies will be limited to a one-hour duration.

The Applicant's business on the subject property has been advertised as Grand Hollows on the Internet as an operation that could accommodate 400+ people and that featured two guest rooms and a two-bedroom tree house apartment. Prior to the January 8, 2014 hearing on this application, the Applicant had three events on the subject property. The first event was a wedding on August 1, 2014 and subsequent events were held on August 10 and 23, 2014.

4. There are a number of alleged enforcement issues regarding the subject property. The District 2 Watermaster, for instance, has notified the Applicant that the pond on the subject property was storing water illegally. A permit is required to construct a reservoir to store water and the Watermaster has supplied the Applicant with a permit application. The Applicant is also being investigated for possible wetland violations and the construction of buildings without building permit approval.
5. The subject property is surrounded by mixed zoning classifications. Adjacent to the north properties are zoned F-2 and Rural Residential (RR-5); to the south, across Fleck Road, properties are zoned RR-5; adjacent to the east properties are zoned RR-5 and E-40 and to the west adjacent properties are zoned F-2. The RR-5 properties are developed with dwellings and outbuildings and most of the forest and farm zoned properties are developed with dwellings and appear to be in farm crop (hay) use. Much of the forest zoned lands nearby appear to contain mapped wetlands eventually draining to Fern Ridge reservoir.

Farm uses that occur in the area consist of grazing horses, cattle, pigs, and chickens. Some of these uses occur on property zoned rural residential. David and Tracy Engholm own two tax lots to the east of the subject property that are zoned E-40 and F-2. They raise cattle, pigs and chickens. The intensity of their livestock management practice was not disclosed in their testimony nor did they allege that the music from prior events on the subject property significantly bothered their animals. The only testimony about livestock being adversely affected by noise from the home occupation was that of the Dillons, to the north, who noted that the music "agitated" their horse, and the Engholms, who testified that their cows move closer to their house on the nights that the Applicant hosted an event on this property. No other symptoms, such as change in eating habits,

failure to breed or nervous agitation that might result in injury, were reported. The Dillon's property is zoned RR-5.

Uses permitted outright by F-2 zoning include but are not limited to: agricultural buildings customarily provided in conjunction with farm or forest use, caretaker residences, and development accessory to existing uses and development and within 250 of the primary structure to which the use is accessory. Uses permitted in EFU zoning include but are not limited to: farm uses, propagation or harvesting of a forest product, structures for farm use, winery, farm stands, outdoor mass gathering, composting operations, and dog training classes or training trials. Uses permitted in the RR zone include but are not limited to: dwellings, temporary medical hardship dwelling, bed and breakfast, residential home, child care facility, home occupation, raising and harvesting crops, or the feeding, breeding and management of livestock, poultry, or fur bearing animals, and forest uses.

6. The subject property is served by the Lane County Fire District #1.
7. The average daily traffic (ADT) count on Fleck Road is 750 vehicles. A Traffic Impact Analysis (TIA) of the proposed home occupation was commissioned by the Applicant. The TIA utilized assumptions in the Ninth Edition of the Trip Generation Manual (for an church assembly) to arrive at a calculation of 2.9 persons per vehicle that would translate into 86 vehicles generated by a 250-guest event (not counting five or fewer employees). This estimate is consistent with the observations made by Betsy Hauenstein of one of the Applicant's events in 2014 where a wedding party of 250 people generated 72 cars within one-half hours time. The modeling of this number of vehicles using one ingress/egress point on the subject property indicated that the level of service of Fleck Road would remain at "A," regardless of whether the event was on a weekday or weekend. The potential for the increase in traffic four-days per week for an entire year would nevertheless change the character of the traffic environment in the neighborhood.

Opponents argue that the TIA is flawed because the Traffic Generation Manual does not specifically provide traffic generation figures for wedding venues or the similar type of events proposed by the home occupation. Lane County Transportation staff recommended that the Applicant use a church as the relevant use for determining trip generation based upon their experience. Based upon Ms. Hauenstein's count, this estimate is probably conservative but within a reasonable range of reality. Absent any other statistics that would undermine this assumption I believe that a figure of 2.9 persons per vehicle is a reasonable estimate of traffic generated by the proposed use.

8. The subject property is not listed in Lane Manual 13.010(2)(b)(i) as an area of limited groundwater quantity. The proposed use would only use water if flush toilets were constructed and a small amount for cleanup. Potable water will be provided through bottled water. In Oregon, a water right is necessary for the withdrawal of more than 5,000 gallons of water per day from a well. Four event-days, using 5,000 gallons of water each day, would require an average pumping rate of about 1.98 gallons per minute for a week. Based upon an analysis of wells in the area around the subject property, the average

production rate of wells located on the north side of Fleck Road are three times as high as those wells located to the south of Fleck Road.

In November of 2014, the production rate of the Applicant's well was measured at nine gallons of water per minute. Recovery time after a four-hour draw-down was 30 minutes. Assuming the use of flush toilets with a maximum two gallons per flush per use, it is estimated that a 250-person event would consume no more than 800 gallons of water. (No water would be used while port-o-potties were in commission.) Using an average of 1.98 gallons per minute usage during a weekend during a 180-day dry spell, it is estimated that the effect would be a drawdown of the aquifer of 0.39 feet within 100 feet of the pumping well.

9. Noise is a subjective factor and the human response to sound is complicated as it is a function of loudness, duration, time of day, and pitch or tone. The magnitude of sound is measured by using a sound meter that measures pressure variations against a reference pressure. The ratio of measured pressure to reference pressure is termed the sound pressure level and is described using units of decibels (dB). On a subjective level, it is generally accepted that an increase in 1 dB is insignificant, an increase in 3 dB is perceptible to most listeners, and an increase in 10 dB is usually judged to be twice as loud.

The human hearing system is more sensitive to some frequencies than others. Thus, sound pressure meters incorporate weighting filters, generally reducing the contribution of low and high frequency sounds, to produce a reading that approximates what a human actually hears. A-weighting is one standard commonly used to measure environmental and industrial noise. While imperfect, since it tends to devalue the effects of low frequency noise, A-weighting is used as a single number to define a level of sound in relation to the human response to that sound. An A-weighted sound level is expressed in terms of dB,A.

Since sounds often change with time, one way of quantifying the temporal characteristics of a noise source is by measuring how often, expressed as a percentage of a specified time period, a certain sound level (dB,A) occurs. For example, the term "L₁₀" denotes that a certain sound level (L) is exceeded 10 percent of a specified time period. For most regulatory bodies, including the Oregon Department of Environmental Quality (DEQ), the specified time period is one hour. Thus, DEQ has developed the following standards for new industrial and commercial noise sources¹:

7:00 a.m. to 10:00 p.m.

L₀₁ – 75 dB,A
L₁₀ – 60 dB,A
L₅₀ – 55 dB,A

10:00 p.m. to 7:00 a.m.

L₀₁ – 60 dB,A
L₁₀ – 55 dB,A
L₅₀ – 50 dB,A

¹OAR 340-035-0035(1)(b)(A), Table 8.

In addition to the above-listed standards, DEQ regulations also forbid a new commercial or industrial noise source from exceeding the ambient statistical noise levels, L_{10} or L_{50} , by more than 10 dB,A in any one hour.²

Lane County has also adopted noise regulations. Section 5.615 of the Lane Code prohibits noise measured at or within the boundary of property with a noise sensitive receiver (i.e. a house) to exceed 50 dB,A at any time during nighttime hours (10:00 p.m. to 7:00 a.m.) or to exceed 60 dB,A during daytime hours (7:00 a.m. to 10:00 p.m.).

The Applicant commissioned a noise study by an acoustical professional. The microphone was calibrated to ANSI S.140-1984 national and international standards. Presumably, this is consistent with the sound level meter requirements of Lane Code 5.610(10, which specifies an ANSI Standard of 1.4-1971.

Prior to describing the study, it is important to characterize the noise environment of the proposed use. Live music will not be used, movies will not be shown, and there will be no subwoofers associated with the speaker system. Principal noise sources will consist of amplified sound from a two-speaker system, the talking of guests, and vehicles traveling over the gravel access driveways and Fleck Road.

The noise study conducted by the Applicant's acoustical consultant was conducted between 1:30 to 4:00 p.m. In this study, noise readings were taken at a number of locations, including the center of the dance floor, the northeast corner of the subject property; 25577 Fleck Road, 440 feet from the dance floor, east of the property line; 25607 Fleck Road, 500 feet from the dance floor, east of the property line; 25619 Fleck Road, 460 feet from the dance floor, east of the property line; 25560 Fleck Road, 500 feet from the dance floor, east of the property line; 25514 Fleck Road, 950 feet from the dance floor, east of the property line; and 25490 Fleck Road (Spicers), 1,250 feet from the dance floor, east of the property line. Music fed into the speaker system on the dance floor was adjusted to an average level of 92 dB(A). The results were that the nighttime noise levels established by the Lane Manual were exceeded at all locations and the daytime noise levels established by the Lane Manual were exceeded at three locations.

The ambient noise levels off of the subject property varied between 41.6 and 62.9 dB,A. At three of the off-site testing locations, the maximum measured sound was more than 10 dB,A greater than the ambient background. At two others the difference was slightly more than 5 dB,A.

Options for reducing the sound levels to comply with Lane Code 5.615 include turning down the source sound to 83 dB,A until 10:00 p.m. and then down to 70 dB,A thereafter. Another option would be to enclose the east, north and west sides of the pavilion with double pane glass or 2 x 6 insulated wall construction and reducing the sound source to 85 dB,A after 10 p.m. The Applicant has chosen the second option.

² OAR 340-035-0035(1)(b)(B)(i).

Modification Of Proposal

After the January 8, 2015 hearing on this matter but before the closure of the record, the Applicant requested permission to modify his application to include a pool house to accommodate a gift table and serve as the location for a wedding photo site and guest book signing. Opponents argue that this modification requires that the Applicant submit a new application. This contention is not supported with relevant case law.

Case law that was cited, *Schatz v. City of Jacksonville*, 25 Or LUBA 327 (1993), stands for the proposition that local governments have the discretion to allow a modification in the absence of a code provision to the contrary. There is no provision in the Lane Code that would prevent an amendment to an application and I believe that a modification may be approved if two conditions are met. First, there must be an adequate opportunity for other parties to review and respond to that modification. In the present case there was. Second, the modification must leave the application fundamentally intact.³ That is, it cannot require that the approval criteria be analyzed differently. In the present case, the pool house is a small structure that does not increase the capacity of the events nor does it add to their intensity. Indeed, it is not essential to the operation of the home occupation as proposed by the Applicant.

The modification of the application is approved.

Decision

THE PLANNING DIRECTOR'S DENIAL OF THE HEAD REQUEST FOR A HOME OCCUPATION (PA 14-05360) FOR A HOME OCCUPATION TO ALLOW WEDDINGS, RETIREMENTS, ANNIVERSARIES, GRADUATIONS, BANQUETS, FAMILY REUNIONS, AND SIMILAR EVENTS WITHIN THE F-2 DISTRICT IS AFFIRMED.

Justification for the Decision (Conclusion)

Opponents of the proposed home occupation have suggested that the scope of the application is such as to represent an intent to circumvent state restrictions on "other gatherings" per OAR 660-006-0025(3)(q). Regardless of the merits of this argument, however, the Oregon Court of Appeals has made it clear that this issue is not relevant where the use is allowed by statute.⁴ As noted earlier in this decision, home occupations in counties are governed by ORS 215.448 and, applying the court's reasoning in the *Jackson County* case, the issue of compliance with the "other gatherings" regulations is off the table.

It has also been argued that the intensity of the proposed use is not appropriate to a forest zone, citing *Linstromberg v. Lane County*, LUBA No. 2013-096 (Feb. 13, 2014) and *White v. Lane County*, LUBA No. 2013-063 (Dec. 10, 2013). Whether one agrees with LUBA's reasoning in *Linstromberg*, the scale of the two proposals are quantitatively dissimilar. The proposed use in this case would only accommodate 250 people while in *Linstromberg* the events could include

³ *Welch v. Yamhill County*, 56 Or LUBA 166 (2008)

⁴ *Jackson Cty. Citizens' League v. Jackson Cty.*, 171 Or App 149, 159 (2000)

2,000 people. The *White* case considered a temporary use permit while this application concerns a home occupation; a specific use allowed in forest zones under ORS 215.448. If the standards applicable to the home occupation are met, as well as the more general standards of Lane Code 16.211(3), then the application must be approved. The primary question of whether the intensity of the proposed use is too great is largely decided by the application of Lane Code 16.211(3)(n)(v), which measures the impact of the use not only on the zoning of the subject use but also against existing and potential uses in nearby zoning districts.

Opponents point to alleged enforcement issues associated with the use of the subject property and the discrepancy between the building permit for the pavilion and its proposed use; speculating that the Applicant will not abide by his description of how the home occupation will operate or comply with the conditions of approval. I cannot assume that this will happen based upon past occurrences. Approval or denial of the application must be based upon the feasibility of the Applicant's compliance with the home occupation, as proposed, and conditions of approval that might mitigate adverse impacts. The permit must be renewed every year; giving the Planning Director and neighbors an opportunity to measure an approval against performance. By the same token, the application must be judged as it was proposed to the county, not on the basis of previous business plans advertised on the Internet. Obviously, grand plans are often modified to reflect sound legal advice and the reality of applicable land use regulatory constraints.

Lane Code criteria applicable to home occupations in the Impact Forest Lands zone are contained in Lane Code 16.211(3). Home occupations are a discretionary use subject to Planning Director approval under Lane Code 16.211(3)(n). Uses listed in Lane Code 16.211(3)(a) through (s) must comply with the following standards:

1. **Will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;**

One question that was raised early in the appeal process concerned identifying a reasonable study area within which to measure impacts from the proposed use. The staff settled on a study area that had a radius of 3,000 feet measured from the pavilion while the Applicant proposed a study area of 1,500 feet measured from the same location. Staff argues that the 3,000-foot area is appropriate because the topography in that area is relatively level and homogeneous. On the other hand, I can't recall anyone who testified to actually being adversely affected by the previous events in 2014 as living much farther than 1,600 feet from the pavilion. In addition, because the topography of the area surrounding the subject property is relatively homogeneous and because the mixed zoning pattern is similar within both the proposed study areas, it seems that if alleged adverse impacts within the 1,500-foot study area are either adequately mitigated or found to be nonexistent then the same could be said regarding similar impacts in the larger study area. Said another way, the record does not disclose any impacts that would seem to affect properties outside the 1,500-foot study area that would not be present within that study area.

The agricultural practices in the area that occur on farm or forest lands appear to be of low intensity and consist of hay production and the raising of horses, cattle, pigs and chickens. There is a horse facility located about 1,000 feet to the west of the subject property; separated by about 400 feet of dense forest. There are no documented forest uses within the study area. Testimony in opposition to the proposed use raised issues about noise, fire danger, traffic hazards, water supply and quality, and trespass; all of which could potentially have an adverse affect on agricultural and forestry activities. These allegations will be addressed separately:

Noise: There was no testimony or evidence that noise from the events held on the subject property had adversely affected farm crops, forestry operations (of which none have been identified) and there is limited testimony that animals on land zoned for agriculture might have been adversely impacted. The Engholms testified that their cows move closer to their house on the nights that the Applicant hosted an event on this property but it is difficult to access what level of stress this represents in the animals. No other symptoms, such as change in eating habits, failure to breed or nervous agitation that might result in injury, were reported. The Dillons testified that the music agitated their horse but their property is zoned RR-5 and is not afforded any protection under this approval criterion. The same situation exists for the Huddlestons, who speculate that their farm animals will be impacted by the noise but apparently were not so affected by the previous large events held on the subject property. Like the Dillons, the Huddleston property is zoned RR-5 and is not afforded the protection under this approval criterion.

Staff and the Applicant have characterized the agricultural activities in the area as being of low intensity and testimony in the record does not seem to contradict that conclusion. For these reasons, I must conclude that noise from the home occupation, mitigated as suggested by the Applicant's sound consultant, will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands.

Fire Hazard:

Fire hazard is a very real concern for rural residents, especially in drought conditions and where areas are heavily forested. At least five neighbors testified regarding their concerns about fire hazard. Some concerns were related to a previous brush burn that occurred on the subject property although the Applicant was subsequently advised by a representative of the fire district about open burning regulations. There is no evidence that illegal burns occurred beyond this point in time. A primary fire hazard concern associated with the proposed use is that created by careless disposal of cigarettes. Other concerns voiced were the use of fireworks and open pit fires. The applicant has not proposed the latter activities and, in the absence of an approval of such, would not be allowed under the approval of this application.

The danger from cigarette disposal can be addressed through adequate "Smoking" and "Non-Smoking" signage, the provision of one or more "safe" areas in which to smoke, and clearly noticed rules regarding the use of cigarettes. If the rules are enforced then

there should be no problems. If not, then the home occupation would not be renewed. All of these considerations can be included in conditions of approval.

Fire danger from other aspects of the proposed use do not appear to be significant. Food will be catered and no cooking will be associated with the events. The pavilion, where most of the activities will occur, has a concrete floor and adequate fire suppression devices can also be conditioned. In addition, the subject property is served by Lane County Fire District #1.

Fire safety features built into the proposed use include a primary fire and emergency access from the guest parking area as well as a secondary fire and emergency access from this area. A fire lane is incorporated in the design of the parking area. Conditions of approval can require a fuel break verification for the two structures used in the home occupation. Also per conditions of approval, hazardous vegetation and grass can be removed and all access ways be made to fire district specifications.

If the fire safety accommodations warranted by the Applicant suggested in this decision were implemented then a reasonable conclusion would be that the proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands due to fire hazard.

Traffic Impacts: A Traffic Impact Study has been conducted for the proposed use operating at a peak intensity of a 250-person event. The study concluded that the number of vehicles generated by an event of that size would not change the Level of Service (LOS) classification of Fleck Road; which is and "A," the highest rating available. There was no testimony that traffic generated by the proposed use would adversely affect the use of Fleck Road by agricultural or forestry activities and there are no agricultural or forestry uses that share access to Fleck Road with the subject property. That is, the Applicant's property is not used in the movement of livestock, crops, forestry product, or agricultural or forest machinery.

In specific, the estimated times that cars would be cuing up on Fleck Road waiting for access to the property were relatively small, but would represent a distinct increase from what is normal for the area. Line of sight measurements in relation to road speed and egress/access patterns were also studied and found to be within safe parameters. One issue that is of concern is the allegation that at one event, buses that were used to transport people to the event had to unload and load their passengers on Fleck Road. This is clearly a safety concern to farm or forest activities using the road, as well as to other users of the road and to the bus riders. If this use were to be approved, the entrances to the property would have to be enlarged to adequately accommodate bus traffic. Another similar concern had to do with the adequacy of traffic control staff; especially at the access points to the subject property. This too, however, can be adequately address through conditions of approval.

For the reasons stated above, I must conclude that with the identified possible conditions of approval, traffic generated by the proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands.

Water Supply: The subject property is not listed in the Lane Manual as an area of limited water quantity and the well on the subject property has been shown to easily supply the needs of the proposed use without seriously impacting the recovery time of the aquifer. Thus, an analysis of the amount of water necessary to meet the needs of the proposed use, assuming water being used by two flush toilets and for clean up, would result in less than one-half of a foot of drawdown of the aquifer within 100 feet of the well. The pump test conducted by the applicant indicated that the recovery rate of the aquifer was quite quick; about 30 minutes.

Well log data demonstrates that there is quite a variation of well capacity in the area; with better producing wells generally located north of Fleck Road. The pumping capacity of a well is determined not just by the capacity of the aquifer from which it takes water but also the depth of the well in relation to the aquifer. In addition, the Applicant proposes to bring in 500 gallons of potable water for each event.

The analysis conducted by the Applicant indicates that the home occupation, as proposed, will not make a significant impact on the aquifer and therefore will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands because of a negative impact on the local underground water supply.

Water Quality: Concerns have been raised about pollution of the seasonal stream that flows through the subject property, and which is used to water the farm animals on the Engholm's property, and pollution of the groundwater from the placement of a new, large subsurface sewage disposal system. On the first issue, there is nothing in the description of the proposed use that would seem to adversely affect the seasonal stream other than the opponents ascribing bad intent to the Applicant. Secondly, a new sanitation system would have to comply with DEQ standards for the placement of a septic tank system. Adequacy of soils, height of the groundwater, and distance from wells are all considered in the approval criteria for sanitation systems. An adequately sized system that is approved by the County must be presumed not to significantly pollute the groundwater on neighboring properties.

Trespass: Incidents of apparent trespass associated with past events have been alleged but it was unclear whether those incidents were related to the conduct of the home occupation. These concerns, however, were not related to impacts on farm or forest activities. The Engholms did raise a concern about their liability if their farm animals trespassed upon the subject property. The Applicant has addressed this issue by stating that fencing would be constructed to prevent trespassing in either direction.

Because parking and the event activities will be constrained to the subject property, which will be fenced, it seems reasonable to assume that the potential for trespass onto adjacent resource lands will be minimal due to fencing, signage, and warnings supplied to guests. On the basis that there are many ways to prevent trespass that can be built into the conditions of approval, I do not believe that trespass from the proposed use will force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands.

For the reasons presented above, I must conclude that the proposed use, as warranted by the Applicant and burdened by reasonable conditions, will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands.

2. **Will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.**

As determined above, the proposed use will not significantly increase fire hazard. Fire suppression costs will also not be significantly increased. The subject property will have a primary and secondary emergency access, sized to fire district standards and the demands of the district's equipment. Further, the applicant's pond, which lies adjacent to the pavilion, will serve as a backup source of water should it be needed. Thus, no additional fire equipment would be necessary to provide adequate fire service to the proposed use nor will the expense of providing that service be enhanced by any aspect of the proposed use.

Risks to fire suppression personnel occur when access to the fire source is difficult or dangerous or if there exists a substantial amount of dry vegetation that would serve as fuel for a fire. In the present situation, access to the property and the pavilion will meet fire district standards and the parking lot and the grounds around the pavilion will be kept well mowed and clear of fire fuel. No smoking will be allowed in the ceremony area and no activities or machines that would create a fire are contemplated in that region of the property. This circumstance can be explicitly spelled out in conditions of approval.

Finally, the traffic impact analysis indicates that traffic queues caused by the larger events suggest that they will not seriously retard the speed at which the volunteer firemen and firewomen will be able to reach a fire on the subject property. Although it cannot be considered as substantive evidence, the fire district did not respond with fire hazard concerns about the proposed use or its ability to serve the subject property adequately.

Given the above analysis, I do not believe that the proposed use will significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.

Lane Code 16.211(3)(n) requires that home occupations comply with the following requirements:

Lane Code 16.211(3)(n)(i): "Shall be operated by a resident of the property on which the business is located."

The home occupation will be operated by the Applicant, Andrew Head. Mr. Head owns the subject property and resides there.

Lane Code 16.211(3)(n)(ii): "Shall employ on the site no more than five full or part-time persons."

The Applicant states that he intends to have no more than five persons employed during an event at any one time. A prior ruling by the Lane County Board of Commissioners, overruling this hearing official, interpreted Lane Code 16.211(3)(n)(ii) to exclude independent contractors from the definition of "persons employed."⁵ This interpretation has been explicitly overturned by LUBA in the case of *Green v. Douglas County*.⁶ Accordingly, no more than five persons at one time may be employed, either by the Applicant or by those who attend the event.

Based upon past practice, "persons employed" at an event sponsored by the Applicant may include a caterer, a server, a florist, a disc jockey, a bar tender, clean-up staff and parking attendants. At larger events, it is likely that there may be at least two parking attendants and perhaps more than one caterer. Further, recommendations from Lane County Transportation suggest that a minimum of two personnel with communication devices be required at each access for events attended by 140 people or more. How the Applicant expects to juggle these individuals so that no more than five are on the subject property at any one time during a large event is a mystery and I am sure that those testifying in opposition to this application are skeptical. It is likely, however, that many of the duties will be assigned to friends and family who volunteer support.⁷ It is important to note, however, that some of these functions can only be provided by individuals who have certain credentials and/or training; i.e. bartenders, persons directing traffic in a public right-of-way, etc.

The limitation on employees can be made a condition of approval and, in satisfaction of this condition, the applicant could be required to document the persons employed at each event, including the times at which they were on the subject property. This log would then be examined by the Planning Director at the time the Applicant applies for a renewal of the home occupation per Lane Code 16.211(3)(n)(ix).

The application, as warranted by the Applicant, satisfies this criterion.

Lane Code 16.211(3)(n)(iii): "Shall be operated substantially in a dwelling, or other existing buildings normally associated with uses permitted under LC 16.212(2) above."

⁵ Application of Carol Neumann in PA 01-5804 (February 27, 2002)

⁶ 63 Or LUBAS 200 (2011), *rev'd and remanded for other reasons*, 245 Or App 430 (2011); ___ Or LUBA ___ (2011); and *Green v. Douglas County*, ___ Or LUBA ___, *aff'd without opinion* 258 Or App ___ (2013) (No. A154159, Sept. 5, 2013).

⁷ January 15, 2015 email from Shelly Kane to Kimberly O'Dea, regarding "Re: Head: Wedding Event Timeline: Wedding Professionals."

The Applicant has proposed that a pavilion building and a pond house will be used in the operation of the home occupation. These buildings were on the subject property at the time of the application for this home occupation, although the pavilion was not yet complete.

The Applicant has warranted that between 80 and 90 percent of the use will occur within the pavilion building. Under the standard set in *Green v. Douglas County*, this qualifies as being "substantially in" an existing building. The activities conducted outside of the pavilion primarily consist of walking to and from the parking lot and walking to and from and using the ceremony site located in a wooded area north of the pond. The celebration, dining and dancing will occur within the pavilion.

Opponents of this application note that the pavilion was approved as an agricultural structure for horses but subsequently applied for the home occupation prior to the completion of the structure or its use for any agricultural purpose. But the standard is not that the home occupation be conducted in a dwelling or agricultural building; it is that the home occupation be conducted in a dwelling or a building that would normally be associated with uses that are permitted under LC 16.212(2). It should be noted though, building permit standards for an agricultural structure are different from those for a building holding an occupancy of 250 people.

The opponents have also pointed out that the pavilion was not completed at the time that the application was filed. However, the record seems to indicate that the main components of the structure were existing, as the building was completed one month after the application was filed, and subsequent planned improvements were responsive to testimony regarding noise impacts and the Applicant's desire to increase the usability of the structure. I believe that the pavilion was sufficiently completed for purposes of satisfying this approval criterion.

The question then is whether the design or construction of the pavilion would prevent it from serving as a use allowed by LC 16.212(2). This section of the code allows outright agricultural buildings customarily provided in conjunction with a farm or forest use, caretaker residences and uses and development accessory to existing uses. As has been pointed out, the pavilion was approved as an agricultural structure by the County. Neither its chandeliers, glass walls or other fixtures would prevent it from being utilized for this purpose. The pond house was located on a different part of the property when the latter was purchased by the Applicant but was moved to its current location in 2014. Nothing about its size, design or construction materials would delineate it as a building that could not be associated with a use permitted under LC 16.212(2). Neither of those buildings possess any fixtures that would not be appropriate in an agricultural building or an accessory structure. By way of example, I believe that it is not unusual for large horse barns to contain offices, restroom facilities, and other fixtures that support the people that tend horses.

The purpose of this code provision, and its progenitor ORS 197.448(c), is to preclude structures that would not normally be present in the zoning district within which the home occupation would be operated. The purpose is not to ensure that the use of the building remains in agricultural use, as that would preclude its use as a home occupation, defeating the purpose of the statute.

I conclude that the home occupation, as proposed, is consistent with Lane Code 16.211(3)(n)(iii).

Lane Code 16.211(3)(n)(iv): “No structure shall be constructed for the home occupation use that would not otherwise be allowed by LC 16.211(2) above;”

This and the previous standard are essentially the same as they relate to the structure(s) that house the home occupation. Unlike the similar standard in the *Green v. Douglas County* case, where alternations that would change the character of the structure under the Uniform Building Code are prohibited, this standard only requires that the structure be such that it would be permitted outright in the Impacted Forest Zone.

Uses permitted outright by F-2 zoning include but are not limited to: agricultural buildings customarily provided in conjunction with farm or forest use, caretaker residences, and development accessory to existing uses and development and within 250 of the primary structure to which the use is accessory. The pavilion and the pond house are located within 200 feet of the primary residence on the property and qualify as being accessory structures to the primary residence on the subject property. This criterion has been satisfied.

Lane Code 16.211(3)(n)(v): “Shall not unreasonably interfere with existing uses permitted by the zoning of nearby lands or with other uses allowed by LC 16.211(2) above;”

I believe that a significant change in the normal environment of a neighborhood would constitute an unreasonable interference. Whether a use “unreasonably interferes” depends upon whether it is excessive given the existing circumstances and the reasonable expectations of affected residents considering the zoning of their property. In the present case, there is no industrial or commercially zoned land nearby and adjacent and nearby properties are either zoned for resource use (F-1, F-2 or EFU) or for residential use.

Lands adjacent to or nearby the subject property are zoned F-2, E-40, RR-10 or RR-5. Uses allowed by the Impacted Forest Lands District consist of forest operations and structures and land alteration related to forest practices, farm use, private hunting and fishing operations, towers and fire stations, water intake facilities, caretaker residences, the exploration for and production of hydrocarbons, the disposal of solid waste, outdoor mass gatherings, wildlife habitat conservation and management plans and the widening of roads. Uses allowed by the EFU district include farm and forest uses, operations for the exploration and production of geothermal and hydrocarbon resources, the exploration of minerals, the creation, restoration and enhancement of wetlands, wineries, road construction, on-site filming activities, farm stands, fire service facilities, and outdoor mass gatherings. Uses allowed in the Rural Residential District include dwellings, bed and breakfast accommodations, residential homes, child care facilities, home occupations, raising and harvesting crops, up to eight dogs, fish and wildlife management, forest uses, roadside stands, public and semipublic buildings, rock and gravel excavation, and accessory uses.

Existing uses within the study area include residential uses on rural residentially zoned land and low-intensity farming activities that include some hay crops and raising a few cattle, horses, chickens and pigs. The primary concerns voiced by opponents are noise, fire hazard, water usage, and traffic generated by the proposed use. These issues are addressed separately, below.

Noise

The Applicant has argued that the de facto standard for noise is Lane Code 5.615 and that, by definition, if the Applicant's home occupation complies with that standard then the sounds that it generates cannot unreasonably interfere with uses permitted by the zoning of nearby lands. His expert also argued that the approval standard is not "unreasonably interfere" as the Applicant has chosen to apply the Lane Code noise standards. I disagree. I believe that Lane Code 16.211(3)(n)(v) is intended to take into account noise sensitive uses that might occur on neighboring properties, such as with farm animals with sensitive breeding habits; as well as to recognize that the Lane County standards may be well above the ambient noise levels of some rural neighborhoods. It must be remembered that this is not an enforcement proceeding but rather a land use application that represents the introduction of a new commercial use into a rural neighborhood.

In the present case, there is no evidence in the record that there are any noise-sensitive animals or farming practices in the area. There is a concern in the mind of this hearing official, however, about the difference between the volume of the sound generated by the proposed use and the ambient sound levels at various locations in the neighborhood. The noise study was taken on a weekday afternoon; at a time that presumably has a higher ambient noise level than in the evening and, perhaps, even more so than on a weekend evening.

Much effort has been expended by dueling acoustical experts addressing whether the proposed use will exceed DEQ commercial and industrial noise standards or the noise standards of the Lane Code. While it is acknowledged that these regulations cannot substitute for the applicable approval criterion⁸, the discussion is nevertheless useful in placing the noise generated by the proposed use into a context and to allow a quantified "before and after" comparison of the neighborhood.

Concern has been raised that the noise generated by the proposed use will frighten farm animals, possibly causing them to injure themselves. While common sense tells us that loud, startling noises may indeed cause animals to bolt and perhaps injure themselves, there is no evidence that amplified music and voices at the levels proposed by the Applicant are the level of noise that fits into this category.

The impact of noise from the proposed use of residential living, however, is a more serious matter. By most accounts, the area is a typical rural neighborhood with the primary noise source coming from road traffic. The agricultural uses in the area are mostly passive and consist of hay production and grazing, and there is no evidence of intensive forestry practices. It is within this context that the Applicant proposes to operate his home occupation. He requests to host four

⁸ *Wuester v. Clackamas County*, 27 Or LUBA 314, 317 (1994).

events per week. While it is very likely that there will be weeks when no events take place, the proposed use must be evaluated in terms of its maximum potential. This means two weekday events and two weekend events, each hosting up to 250 people plus support staff, every week during the year.

The Applicant's acoustical expert has argued that the noise generated by the proposed use can be controlled to not exceed Lane County noise standards. He may be correct although there are various deficiencies in the study in regard to substantiating that noise from the event will not unreasonably interfere with existing nearby uses. First, it was assumed, but never demonstrated, that the trees on the property would provide adequate mitigation of noise exiting the pavilion to the north. However, Steve and Valarie Dillon, who live about 1,600 feet north of the subject property, found the music from three of the Applicant's events to be "extremely disturbing" to themselves and to agitate their horse. Second, we don't know what the ambient noise level is in the neighborhood in the evening. Without this baseline, we cannot tell how much louder music from the home occupation will be above the expected or "ambient" background noise.

It must be remembered that the DEQ standards are applied to commercial and industrial uses, which normally are located near other commercial and industrial uses. It is a tolerant standard because the ambient sound level in a commercial and/or industrial area is expected to be higher. Nevertheless, these standards recognize that noise generation in excess of 10 dB(A) above ambient is excessive as it is a doubling of the existing sound level.

The major point is that the character of the neighborhood around the subject property is not commercial or industrial. It is a mixture of rural resource and residential lands. It can be assumed that it experiences relatively low nighttime ambient noise, most of which is generated by cars on the road. The addition of the proposed use would potentially change this environment four times a week, primarily in the evenings. The dominant noise would be from an amplified sound system, clearly audible to many surrounding residences, and from cars arriving at and leaving the proposed use. A change of this nature could alter the neighborhood environment to the point that residential activities, such as quiet outdoor gatherings or sleep patterns, would be substantially impacted in the negative. This would constitute an unreasonable interference with the residential uses in the area.

The bottom line is that the Applicant has not measured the ambient sound levels in the neighborhood at night so that there is no way to compare the proposed sound levels to what exists today. It is possible that compliance with Lane County's noise standards may still represent a doubling or more of the ambient sound level in the neighborhood. But this latter measurement has not been made so no conclusion can be drawn as to whether noise from the amplified sound system, crowds and additional road traffic, will constitute an unreasonable interference with the residential uses in the area.

Fire hazard

The issue of fire hazard has been addressed above under LC 16.211(3)(n) and although that is a different standard the same considerations are relevant. A primary fire hazard concern associated with the proposed use is that created by careless disposal of cigarettes. Fireworks and open pit

fires were also of concern but the proposal does not include these activities and they cannot be allowed under the approval of this application.

The danger from cigarette disposal is addressed through adequate "smoking" and "Non-Smoking" signage, the provision of one or more "safe" areas in which to smoke, and clearly noticed rules regarding the use of cigarettes. Fire danger from other aspects of the proposed use do not appear to be significant. Food will be catered and no cooking will be associated with the events. The pavilion, where most of the activities will occur, has a concrete floor and adequate fire suppression devices can also be conditioned. In addition, the subject property is served by Lane County Fire District #1.

Fire safety features built into the proposed use include a primary fire and emergency access from the guest parking area as well as a secondary fire and emergency access from this area. A fire lane is incorporated in the design of the parking area. Also per conditions of approval, hazardous vegetation and grass can be removed and all access ways be made to fire district specifications.

In conclusion, I do not believe that the proposed use represents a fire hazard and therefore cannot be considered to unreasonably interfere with existing or allowed uses regarding this issue.

Water Usage

As previously noted, the subject property is not listed in Lane Manual 13.010(2)(b)(i) as an area of limited groundwater quantity. Potable water will be provided through bottled water and the proposed use would only use a significant amount of water if flush toilets were constructed. The analysis of a pump test indicates that there is more than sufficient capacity in the Applicant's well to supply any conceivable water needs, including the flush toilets, without seriously affecting the aquifer or nearby wells. I must conclude that the use of water by the proposed home occupation will not unreasonably interfere with existing uses permitted by the zoning of nearby lands or with other uses allowed by LC 16.211(2).

Traffic

The Applicant asks for approval to operate the home occupation for four events per week with a potential of 250 people per event or, said another way, 1,000+ per week. Based upon an average vehicle occupancy of 2.9 persons, this translates to about 86 one-way vehicles trips, or 172 total vehicle trips, not counting persons employed to serve the event (add at least another 10 vehicle trips). This is an increase of about 25 percent over the current average vehicle traffic⁹ and does not include visits to view the site or the wedding rehearsals. The issue isn't that the neighborhood would have to endure an influx of traffic a few times a month; this is a case where the neighborhood could theoretically experience a 25 percent increase in traffic, 4 evenings of the week for the entire year, including all weekends.

⁹ Lane County Transportation planners assume that the average daily traffic at the subject property will be less than 750 vehicles as the subject property is located mid-way between the two access ends of the road.

The problem isn't that the proposed use will lower the level of service of Fleck Road or that it will significantly impact highway safety, although the potential for deer collisions would seem to increase substantially at certain times of the year. Rather the problem is that the increase in traffic will fundamentally change in the nature of the neighborhood. As traffic is the major contributor to noise in the area, the duration of this noise source would increase by a factor of 25 percent, with half of the traffic occurring when people are preparing to sleep. In addition, eight of the driveways in the immediate area do not meet Lane County spacing standards, contributing to additional stress on vehicles navigating through the peak hours of the additional traffic.

Given the uses allowed in the surrounding zoning districts, I can think of no other use allowed in the study area that would place a similar year-round load on the local road system. I believe it is an unreasonable interference with the reasonable expectations of the local area residents to place what amounts to an urban commercial use within their midst.

Lane Code 16.211(3)(n)(vi): "Shall comply with sanitation and building code requirements;"

This criterion could be addressed through conditions of approval.

Lane Code 16.211(3)(n)(vii): "Shall not be used as a justification for a zone change;"

The Applicant has acknowledged that establishment of the proposed use will not be used as justification of a zone change and it would take an exception to Statewide Planning Goal 4 to rezone and re-designate the property for residential or commercial use.

Lane Code 16.211(3)(n)(viii): "Shall comply with any additional conditions of approval established by the Approval Authority;"

This criterion is not applicable to a denial.

Lane Code 16.211(3)(n)(ix): "Approved applications for home occupations shall be valid until December 31 of the year that the application was initially approved or until December 31 of the year for which an extension of the approval was granted by the Director as provided below. Prior to December 31 of each year, the property owner or Applicant who received initial approval, or a renewal pursuant to this Section, shall provide the Director with written request for renewal of the Home Occupation and written information sufficient to allow the Director to determine if the Conditions of approval and other approval criteria have been satisfied. The Director shall review this information for each approved home occupation to determine if it continues to comply with the conditions of approval. Home occupations which continue to comply with the conditions of approval shall receive a one-year extension of approval to December 31 of the following year, and such extension shall be put in writing by the Director and mailed to the owner of the property upon which the home occupation is located. Home occupations which do not comply with the conditions of approval, or for which a request for renewal is not received pursuant to this Section, shall not receive extended approval by the Director, and the

Director shall mail written notice of the decision to extend the approval to the owner of the property upon which the home occupation is located.

This criterion could be incorporated into a decision as a condition of approval.

Respectfully Submitted,



**Gary L. Darnielle
Lane County Hearings Official**