

W. 12.a.

AGENDA COVER MEMO

DATE: February 2, 2009 (Date of Memo)
February 18, 2009 (Date of Meeting)

TO: Lane County Board of Commissioners

DEPT.: Public Works Department, Land Management Division

PRESENTED BY: Rafael Sebba, Land Management Division

AGENDA ITEM TITLE: Order No. 09-_____ In the Matter of Electing Whether or Not to Hear an Appeal of a Hearings Official's Reconsidered Decision Approving in part, and Denying in part, an Application for a recreational vehicle, boat, and self-storage facility in the Rural Residential Zone (RR-5), Map and Tax Lot T18-R03-S24 TL 4600 (File No. PA 07-6721/McCabe).

I. MOTION

MOTION TO ADOPT THE ORDER ESTABLISHING THE BOARD'S ELECTION TO HEAR ARGUMENTS IN AN APPEAL OF THE HEARINGS OFFICIAL'S DECISION AND CONDUCT AN ON-THE-RECORD HEARING.

II. ISSUE OR PROBLEM

An appeal to the Board has been filed, contesting a Hearings Official reconsidered decision affirming, in part, and reversing, in part, a Planning Director denial of an application for a recreational vehicle, boat, and segmented self-storage facility in the Rural Residential (RR-5) Zone, pursuant to Lane Code 16.290(4)(r) & (s). The proposal includes 115 RV/boat units and 384 self-storage units, totaling over 79,000 square feet in floor area. The Hearings Official approved the RV/boat storage component of the proposal, and denied the self-storage component.

Pursuant to Lane Code 14.600, the Board must now decide whether or not to hear the appeal by applying criteria set forth in the provisions of LC 14.600(3).

III. DISCUSSION

A. Background

1. The subject property is 5.0 acres in size and is identified as Tax Lot 4600, Assessor's Map 18-03-24. The property is located about one mile east of the rural community of Goshen on the south of State Hwy 58 and has a site address of 34570 Highway 58. It is zoned RR-5/RCP, and lies within "developed and committed" Exception Area 426-2. The subject property lies several miles from both the Eugene-Springfield Urban Growth Boundary and the Community of Pleasant Hill.

2. The Applicant submitted an application for a special use permit on November 8, 2007. The applicant requested Director Approval to build seven (7) commercial buildings to store recreational vehicles, boats, and segmented self-storage units. The proposal includes 115 RV/boat units and 384 self-storage units, totaling over 79,000 square feet in floor area. One of the buildings will also include a 900 square foot office/caretaker residence.
3. The Planning Director denied the application on April 16, 2008.
4. A timely appeal of the Planning Director decision was filed on April 28, 2008, by the applicants, Don and Cheryl McCabe, who are represented by James Spickerman. The Planning Director affirmed the decision and scheduled the appeal for a de novo review by the Hearings Official.
5. A hearing before the Lane County Hearings Official was held on July 10, 2008.
6. On September 2, 2008, the Hearings Official issued a decision affirming the Planning Director's denial of the proposal.
7. A timely appeal of the Hearings Official's decision was filed by the Applicants on September 12, 2008.
8. The Hearings Official held a reconsideration hearing on November 6, 2008.
9. On January 5, 2009, the Hearings Official issued a reconsidered decision affirming, in part, and reversing, in part, the previous decision. The Hearings Official approved the RV/boat storage component of the proposal, and denied the self-storage component.
10. A timely appeal of the Hearings Official's reconsidered decision was filed on January 15, 2009, by Cecil Saxon Jr., who is represented by Michael Farthing.
11. On January 23, 2009, the Hearings Official affirmed his reconsidered decision.

B. Elective Board Review Procedure

The Elective Board Review Procedure in Lane Code 14.600(2)(c) and (d) provides the Board with three options:

- To hear the appeal on-the-record,
- To not hear the appeal and to remain silent on the Hearings Official's decision, or
- To not hear argument in the appeal but to expressly agree with any interpretations of the comprehensive plan policies and implementing ordinances made by the Hearings Official in the decision being appealed and affirm the Hearings Official's decision.

The applicable subsections are:

LC14.600(2)(c) The Board shall specify whether or not the decision of the Board is to have a hearing on the record for the appeal and shall include findings addressing the decision criteria in LC 14.600(3) below. If the Board's decision is to have a hearing on the record for

the appeal, the Board order shall also specify the tentative date for the hearing on the record for the appeal and shall specify the parties who qualify to participate in the hearing on the record for the appeal.

LC14.600(2)(d) If the decision of the Board is to not have a hearing, the Board order shall specify whether or not the Board expressly agrees with or is silent regarding any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed. The Board order shall affirm the Hearings Official decision.

If the Board's decision is to hear arguments on the appeal, then the Board must adopt an Order and findings specifying the tentative date for a hearing and the parties who qualify to participate in a hearing on the record for the appeal. Under LC 14.600(4) participants include the appellant, the applicant, and the Planning Director. If the Board elects to hear, staff suggests a hearing date be set for April 1, 2009 at 1:30 p.m.

In order for the Board to hear the appeal, the Decision Criteria of LC 14.600(3) requires that one or more of the four criteria cited below, be satisfied:

(3) Decision Criteria. A decision by the Board to hear the appeal on the record must conclude the issue raised in the appeal to the Board could have been and was raised before the close of the record at or following the final evidentiary hearing and must comply with one or more of the following criteria:

- a) The issue is of Countywide significance.***
- b) The issue will reoccur with frequency and there is a need for policy guidance.***
- c) The issue involves a unique environmental resource.***
- d) The Planning Director or Hearings Official recommends review.***

C. Analysis.

Character of the Appeal

Upon reconsideration, the Hearings Official affirmed his initial denial of the self-storage component of the proposed facility (47,600 square feet). The applicant applied for the self-storage component under LC 16.290(4)(s), which allows uses and development similar to other uses permitted in the Rural Residential Zone, subject to Director approval and compliance with specific approval criteria. The Hearings Official found that the self-storage component is urban in nature and does not comply with Lane Code 16.290(4)(s)(i) because it is not consistent with the purpose statement of the Rural Residential Zone.

Additionally, the Hearings Official reversed his initial denial of the recreational vehicle and boat storage component of the proposed facility (30,980 square feet). Recreational vehicle and boat storage facilities are permitted under LC 16.290(4)(r), subject to Director approval.

The basis of the initial denial was the proposal's inconsistency with Statewide Planning Goal 14. The proposal was found to be both commercial and urban in nature, based on the facility's size and likely clientele. As such, the proposal would not be appropriate in the Rural Residential Zone. The Hearings Official initially determined that the facility's size could not exceed the size limitations placed on commercial uses allowed within the Rural Commercial Zone (3,500 square feet outside of an unincorporated community).

However, in his reconsidered decision, the Hearings Official found that it is incorrect to apply Statewide Planning Goal 14 to the recreational vehicle and boat storage component of the proposed facility. The Hearings Official accepted the applicant's argument that the language of LC 16.290(4)(r) is clear and that the only applicable approval criteria are those of 16.290(5). The Hearings Official also appears persuaded that self-storage is more appropriately considered an industrial use.

The appellant takes issue with the reconsidered decision and maintains that the Hearings Official's initial decision is correct. The appellant contends that the reconsidered decision violates the purpose and intent of the Rural Residential Zone and the basic premise of Statewide Planning Goal 14, as was argued in the initial decision. The appellant also states that, if allowed to stand, there would be no size limit on recreational vehicle and boat storage facilities in the Rural Residential Zone, which could have implications for properties near major bodies of water and along recreational corridors.

A recreational vehicle and boat storage facility in the Rural Commercial Zone, outside of an unincorporated community, would be limited to 3,500 square feet in size. In the Rural Industrial Zone outside of an unincorporated community, it would be limited to 35,000 square feet in size. But in the Rural Residential Zone, according to the Hearings Official's reconsidered decision, there would be no size limitation.

The central question raised in this appeal is whether it is appropriate to apply Statewide Planning Goal 14, as implemented by OAR 660-022-0030(10) and (11), in order to determine if the proposed facility constitutes an urban use allowable in the Rural Residential Zone. Does the Hearings Official interpretation mean Lane Code 16.290 allows "urban" uses inconsistent with the rules and acknowledgement conclusion reached as a part of Periodic Review? If Statewide Planning Goal 14 is applied, two additional questions are: is the proposed facility commercial or industrial in nature; and what is an appropriate maximum size for the proposed facility in the Rural Residential Zone?

If the Board agrees with the Hearings Official's reconsidered decision and finds the appeal does not meet any of the election-to-hear criteria, it is then appropriate not to hear arguments on the appeal. A new Order with findings addressing Lane Code 14.600(2)(d) and (3) will be needed in lieu of the attached Order.

If on the other hand the Board concludes that further interpretation of the issues raised in the appeal is necessary, then it is appropriate to schedule an on the record hearing as authorized by Lane Code 14.600(2)(c) and conducted pursuant to Lane Code 14.600. An Order implementing this option is attached.

Analysis of Election to Hear Criteria

Each Lane Code 14.600(3)(a)-(d) election-to-hear criterion is presented below with the Director's analysis.

a. *The issue is of Countywide significance.*

The Rural Residential Zone exists throughout the County. The implications of the reconsidered decision could apply to any Rural Residential zoned property in the County.

- b. *The issue will reoccur with frequency and there is a need for policy guidance.*

The special use permit application before the Board is one of three applications for recreational vehicle and boat storage facilities in the Rural Residential Zone submitted to the County since September of 2007. The issues at hand were raised in each case. All three applications were appealed to the Hearings Official. The Hearings Official denied one application (PA 07-6355) using arguments very similar to those initially presented in this case, prior to reconsideration. The Hearing's Official approved the other application (PA 08-5496) using arguments very similar to the reconsidered decision for this case.

The issue has recurred with frequency recently. In all likelihood, similar facilities will be proposed in the future. Policy guidance is needed now in order to proactively address future proposals. The fact that the Hearings Official has been able to effectively argue at least two sides of the issue also illustrates a need for policy guidance.

- c. *The issue involves a unique environmental resource.*

No unique or rare environmental resources on the property have been identified in the record.

- d. *The Planning Director or Hearings Official recommends review.*

The Planning Director recommends review of the appeal.

D. Options

1. To hear the appeal on the record;
2. To not hear arguments on the appeal and to remain silent on the Hearings Official's reconsidered decision and interpretations; or
3. To not hear arguments on the appeal, affirm the Hearings Official's reconsidered decision, and to expressly agree with any interpretations of the comprehensive plan policies, or implementing ordinances or state law made by the Hearings Official in the decision being appealed.

E. Recommendation

Option 1 is recommended by the Planning Director.

F. Timing

If the Board elects to hear the appeal, staff suggests a hearing date be set for April 1, 2009 at 1:30 P.M.

IV. IMPLEMENTATION/FOLLOW-UP

Notify the parties of the Board decision to adopt the attached Order and conduct an on the record appeal hearing, or

If the Board elects not to hear the appeal, a new Order and Findings will need to be prepared and adopted, as soon as possible.

V. ATTACHMENTS

1. Board Order electing to hear the appeal, with Exhibit "A" (findings).
2. Hearing's Official Reconsidered Decision dated January 5, 2009 with Affirmation of Decision dated, January 23, 2009.
3. Appeal of Hearings Official January 5, 2009 Reconsidered Decision, received on January 15, 2009, with arguments.
4. Map illustrating location of property.

The entire file record is available for review at the LMD. If an on-the-record appeal hearing is scheduled, a complete copy of the record with all evidence will be made available to the Board as part of the staff generated agenda packet.

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: **IN THE MATTER OF ELECTING WHETHER OR NOT TO HEAR AN APPEAL OF A HEARINGS OFFICIAL'S RECONSIDERED DECISION APPROVING IN PART, AND DENYING IN PART, AN APPLICATION FOR A RECREATIONAL VEHICLE, BOAT, AND SELF-STORAGE FACILITY IN THE RURAL RESIDENTIAL ZONE (RR5), MAP AND TAX LOT T18-R03-S24 TL 4600 (FILE NO. PA 07-6721/MCCABE).**

WHEREAS, the Lane County Hearings Official has made a decision affirming in part, and reversing in part, the Planning Director's and Hearings Official's previous denial of a recreational vehicle, boat, and self-storage facility application in File No. PA 07-6721; and

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

WHEREAS, the Lane County Hearings Official has affirmed his reconsidered decision on the application and appeal in File No. PA 07-6721; and

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

WHEREAS, the Board of County Commissioners has reviewed this matter at a public meeting of the Board;

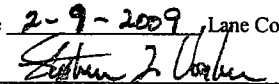
NOW, THEREFORE, BE IT ORDERED the Board of County Commissioners of Lane County finds and orders as follows:

1. The appeal does comply with the criterion of Lane Code 14.600(3)(a), (b) and (d) as described in the findings attached as Exhibit "A" and incorporated here by this reference, and the Board will hear arguments in an appeal on-the-record pursuant to Lane Code 14.200, 14.400 and Lane Manual 3.915 on April 1, 2009, at 1:30 p.m.
2. Pursuant to LC 14.600(4) the participants are the appellant, applicant, and the Planning Director.

DATED this _____ day of _____, 2009.

Pete Sorenson, Chairperson
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 2-9-2009, Lane County

OFFICE OF LEGAL COUNSEL

Order Exhibit "A"

FINDINGS IN SUPPORT OF THE ORDER

1. The subject property is 5.0 acres in size and is identified as Tax Lot 4600, Assessor's Map 18-03-24. The property is located about one mile east of the rural community of Goshen on the south of State Hwy 58 and has a site address of 34570 Highway 58. It is zoned RR-5/RCP, and lies within "developed and committed" Exception Area 426-2. The subject property lies several miles from both the Eugene-Springfield Urban Growth Boundary and the Community of Pleasant Hill.
2. The Applicant submitted an application for a special use permit on November 8, 2007. The applicant requested Director Approval to build seven (7) commercial buildings to store recreational vehicles, boats, and segmented self-storage units. The proposal includes 115 RV/boat units and 384 self-storage units, totaling over 79,000 square feet in floor area. One of the buildings will also include a 900 square foot office/caretaker residence.
3. The Planning Director denied the application on April 16, 2008.
4. A timely appeal of the Planning Director decision was filed on April 28, 2008, by the applicants, Don and Cheryl McCabe, who are represented by James Spickerman. The Planning Director affirmed the decision and scheduled the appeal for a de novo review by the Hearings Official.
5. A hearing before the Lane County Hearings Official was held on July 10, 2008.
6. On September 2, 2008, the Hearings Official issued a decision affirming the Planning Director's denial of the proposal.
7. A timely appeal of the Hearings Official's decision was filed by the Applicants on September 12, 2008.
8. The Hearings Official held a reconsideration hearing on November 6, 2008.
9. On January 5, 2009, the Hearings Official issued a reconsidered decision affirming, in part, and reversing, in part, the previous decision. The Hearings Official approved the RV/boat storage component of the proposal, and denied the self-storage component.
10. A timely appeal of the Hearings Official's reconsidered decision was filed on January 15, 2009, by Cecil Saxon Jr., who is represented by Michael Farthing.
11. On January 23, 2009, the Hearings Official affirmed his reconsidered decision.
12. In order for the Board to hear arguments on the appeal, Lane Code 14.600(3) requires one or more of the following criteria to be found by the Board to apply to the appeal:
 - *The issue is of Countywide significance.*
 - *The issue will reoccur with frequency and there is a need for policy guidance.*
 - *The issue involves a unique environmental resource.*
 - *The Planning Director or Hearings Official recommends review.*
9. The Board of Commissioners finds that the appeal issue is of Countywide significance. The Rural Residential Zone exists throughout the County. The implications of the reconsidered decision could apply to any Rural Residential zoned property in the County.
10. The issue has come up with some frequency recently. In all likelihood, similar facilities will be proposed in the future. Policy guidance is needed now in order to proactively address future

proposals. The fact that the Hearings Official has been able to effectively argue at least two sides of the issue also illustrates a need for policy guidance. Thus, there is a need for policy guidance on the proper interpretation of the applicable LC provisions by the Board.

11. The Planning Director recommends review of the appeal.
12. To meet the requirements of Lane Code 14.600(2)(b), the Board is required to adopt a written decision and order electing to have a hearing on the record for the appeal or declining to further review the appeal.
13. The Board has reviewed this matter at its meeting of February 18, 2009, and finds that the appeal does comply with the criteria of Lane Code Chapter 14.600(3), and elects to hold an on the record hearing.
14. Under LC 14.600(4) the participants in the on the record hearing include the applicant, the appellant, and the Planning Director.



January 23, 2009

Mr. Kent Howe, Director of Planning
Lane County Land Management Division
125 E. 8Th Ave.
Eugene, OR 97401

Re: *Appeal of Reconsidered Hearings Official Decision in McCabe (PA 07-6721)*

Dear Mr. Howe:

Cecil Saxon, Jr. has appealed my January 5, 2009 reconsidered decision in PA 07-6721 regarding a request for a special use permit to allow a recreational vehicle, boat, and segmented self-storage facility on tax lot 4600, assessor's map 18-04-24. Upon my review of this appeal, I find that the issues raised in the appeal were addressed in the reconsidered decision and that there is no merit in my considering those issues further. Accordingly, on the authority of Lane Code 14.535(2)(c), I shall affirm my January 5, 2009 decision.

Sincerely,

Gary L. Darnielle
Lane County Hearings Official

Cc: Rafael Sebba
Mr. James Spickerman, Esq.
Mr. Michael Farthing, Esq.



January 5, 2009

Mr. Kent Howe, Director
Lane County Land Management Division
Public Service Building
125 E. 8th Ave.
Eugene, OR 97401

Re: Reconsideration of the Hearings Official decision affirming the Planning Director's denial of the McCabe request (PA 07-6721) for a special use permit for a recreational vehicle and boat storage and mini-storage facility within the RR-5 District.

Dear Mr. Howe:

Please find the Lane County Hearings Official's reconsidered decision reversing, in part, and affirming, in part, the September 2, 2008 denial of the McCabe request (PA 07-6721) for a special use permit for a recreational vehicle and boat storage and mini-storage facility on Tax Lot 4600, Assessor's Map 18-03-24.

Sincerely,



Gary L. Darnielle
Lane County Hearings Official

CC: Lindsey Eichner (file)

**LANE COUNTY HEARINGS OFFICIAL
RECONSIDERATION OF A HEARINGS OFFICIAL DENIAL OF A REQUEST FOR A
SPECIAL USE PERMIT TO ALLOW FOR AN RV, BOAT AND SEGMENTED SELF-
STORAGE FACILITY WITHIN A RURAL RESIDENTIAL DISTRICT**

Application Summary

Don & Cheryl McCabe, 362 North 42nd Street, Springfield, Oregon 97478. The applicants requested a special use permit to allow a recreational vehicle, boat, and segmented self-storage facility in the Rural Residential (RR5) Zone, pursuant to Lane Code 16.290(4)(r) & (s). The Lane County Planning Director denied the request on April 15, 2008 and a timely appeal was filed by the applicants.

A hearing before the Lane County Hearings Official was held on July 10, 2008 and a decision affirming the Planning Director was issued on September 2, 2008. A timely appeal was filed and the Hearings Official agreed to reconsider the September decision.

Parties of Record

Don & Cheryl McCabe
Thomas & Bonnie Woolley

Mike Farthing

Jim Spickerman

Application History

Reconsideration Hearing Date: November 6, 2008
(Record Held Open Until December 18, 2008)

Reconsidered Decision Date: January 5, 2008

Appeal Deadline

An appeal must be filed within 10 days of the issuance of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

Lane Code 16.290(4)(r) & (s)
Lane Code 16.290(5)

Findings of Fact

1. The applicants propose a facility to store recreational vehicles (RVs), boats and household goods. It will be open Monday through Saturday, 10:00 a.m. to 6:00 p.m. and is closed Sunday. A manager will be present 24 hours-a-day, seven days a week. The facility will be entirely enclosed with a six-foot tall chain link fence.
2. The findings of fact of the September 2, 2008 Hearings Official decision in PA 07-6721 are incorporated by reference except where explicitly modified by this decision.
3. The State Fire Marshal has revised previous comments and now finds that the applicant's site plan adequately provides for the access and circulation of fire apparatus to the proposed use.
4. The site plan (updated 12/26/07) shows the north side of Building A to be 50 feet from the right-of-way of Highway 58. Interpretation of available flood plain maps indicates that the area between the highway right-of-way and Building A is located outside of the flood hazard area.
5. The application consists of 7 storage buildings; A-G.¹ Buildings A, B and G contain 115 units within 30,980 square feet for the storage of boats and recreational vehicles. Buildings C through F contain 47,600 square feet devoted to mini-storage.

Decision

THE SEPTEMBER 2, 2008 DECISION REGARDING THE MCCABE REQUEST (PA 07-6721) FOR A SPECIAL USE PERMIT TO CONSTRUCT AN RV, BOAT AND SELF-STORAGE FACILITY IS AFFIRMED, IN PART, AND REVERSED, IN PART.

THE RV AND BOAT STORAGE COMPONENT OF THE REQUEST IS APPROVED, subject to the following conditions:

1. Outdoor lighting shall be as warranted by the applicant with no spill-over light from the proposed facility.
2. The applicant shall submit a revised site plan showing the location of the buildings housing the recreational vehicles and boats, the office/caretaker residence and the required parking spaces.
3. The applicant shall procure all necessary building and sanitation permits prior to expanding the current operation. In this regard, the applicant shall maintain fire code standards as they pertain to vehicle storage.
4. The applicant shall procure a Floodplain Special Use Permit prior to the construction of the structures.
5. The proposed recreational vehicle and boat storage facility shall be operated as warranted by the applicant.

¹ See Site Plan dated 12/26/07.

6. Signage of the proposed use must be consistent with Lane Code 16.290(7)(g).
7. The proposed use shall be equipped with a storm drainage system designed with a capacity to treat storm runoff from new impermeable surfaces on the subject property for up to 5-year storm events.

THE MINI-STORAGE COMPONENT OF THE REQUEST IS DENIED.

Justification for Decision (Conclusion)

This application is evaluated pursuant to the uses subject to Hearings Official approval and applicable criteria found in Lane Code 16.290(4)(r) & (s) and Lane Code 16.290(5). Lane Code 16.290(4)(r) and (s) allow storage facilities for boats and recreational vehicles and similar uses, respectively, subject to compliance with Lane Code 16.290(5).

The September 2, 2008 decision in this matter affirmed the Planning Director's denial of this application on the basis of its inconsistency with Statewide Planning Goal 14. I now believe that this decision, as it applied to the storage of boats and recreational vehicles, was not a correct interpretation of the code and this reasoning has been applied to an intervening decision.²

Boat and Recreational Vehicle Storage

The applicant proposes 115 storage units, consisting of about 30,980 square feet for the storage of boats and recreational vehicles. The applicant has argued that the language of Lane Code 16.290(4)(r) is clear that storage facilities for boats and recreational vehicles may be allowed subject only to the approval criteria of Lane Code 16.290(5), and that there is no ambiguity to explain. However, the ambiguity of a provision may not appear on its face but may become apparent only when placed in its statutory context or framework. The opponents argue that this is the case in the present situation and point to the purpose statement of the Rural Residential District as part of the statutory context that must be considered. In specific, they cite Lane Code 16.290(1)(b), which provides:

- (b) *To promote a compatible and safe rural residential living environment by limiting allowed uses and development to primary and accessory rural residential uses and to other rural uses compatible with rural residential uses and the uses of nearby lands;*

Whether the language of Lane Code 16.290(1) can be considered as creating an approval standard is a question of statutory construction. One of the fundamental principles of statutory construction, and one memorialized in ORS 174.010, is that a court should not insert what has been omitted nor omit what has been inserted from a statute. In this regard, the language of Lane Code 16.290(4)(s) is instructive. Subsection (4)(s) concerns "uses and development similar to uses and development allowed by Lane Code 16.290(2) & (4)" and requires, in part, that such uses be consistent with the purpose of LC 16.290(1). By its explicit reference to subsection (1), the Board of Commissioners have made a conscious decision to not require the same level of

² *Application of Steve and Denise Banton*, Lane County Hearings Official Decision in PA 08-5496 (January 5, 2009)

scrutiny to other uses listed under LC 16.290(4). By the same token, several uses in LC 16.290(4), such as animal hospitals, lodges and grange halls, have square footage requirements. Again, no such restrictions apply to LC 16.290(4)(r).

In summary, neither the plain language of Lane Code 16.290(4)(r) nor its context within Lane Code 16.290(4) support a conclusion that there are any external approval standards, other than those found in Lane Code 16.290(5), that apply to the storage of boats and recreational vehicles within the rural residential district.

(5) Approval Criteria. Uses and development in LC 16.290(4)(a) through (s) above, except for telecommunication facilities allowed in LC 16.290(4)(d) above, shall comply with the requirements in LC 16.290(5) below. Telecommunications facilities allowed by LC 16.290(4)(d) above shall comply with the requirements in LC 16.264.

(a) Shall not create significant adverse impacts on existing uses on adjacent and nearby lands or on uses permitted by the zoning of adjacent or nearby undeveloped lands;

The proposed use is passive in that there is no sale of goods and the only traffic is that of clients visiting the site to store boats or RVs or to move one of those vehicles. It will be located on that portion of the subject property adjacent to Highway 58.

Parcels to the east and south are actively farmed with alfalfa and hay as their principle crops. The owners of these properties do not believe that the proposed use is incompatible with their agricultural pursuits.

The parcel adjacent to the west is zoned rural residential and apparently is occupied by a nonconforming or illegal business that involves the open storage of vehicles and the indoor manufacture of RV axles. Properties further to the west include small residences on rural residentially-zoned land and the Highway 58 Market, which has RC zoning.

Properties across Highway 58 are occupied by two active businesses, Lanze Electric, an electrical contractor, Franklin Contracting, and Highway 58 Garage. These uses are active and include offices, storage yards and warehousing.

The applicants' Traffic Impact Analysis for the RV, boat and mini-storage uses shows an estimated ten vehicles entering and leaving the subject property during peak hours. The proposed use is expected to generate 16 to 30 traffic movements per day with an average of about 16 per day. Trip generation mini-warehouses is expected to be less than that of boat and recreational vehicle storage units.

The proposed use is largely passive in nature with the only major impacts on surrounding properties coming from very light traffic generation and the aesthetic impact of the proposed storage buildings. The latter impact does not have a

significant impact since industrial development is located across Highway 58 and a business of some kind operates adjacent to the west.

Trespass does not appear to be a legitimate concern as the proposed facility will be entirely fenced and a manager is constantly present. Fire safety is also not a major concern as the Deputy State Fire Marshal has found the circulation pattern of the site adequate and the property lies within the Goshen Rural Fire Protection District. Additionally, as a condition of approval, the construction and layout of buildings must conform to fire code standards as they pertain to storage buildings of the size proposed.

The proposed use, as conditioned by this decision, meets this criterion.

- (b) Where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby lands;**

Conditions of approval are attached to this decision. In specific, storm water generated by the proposed use must be treated on-site.

- (c) The proposed use and development shall not exceed the carrying capacity of the soil or of the existing water supply resources and sewer service. To address this requirement, factual information shall be provided about any existing or proposed sewer or water systems for the site and the site's ability to provide on-site sewage disposal and water supply if a community water or sewer system is not available; and**

A new septic tank system is proposed and will be constructed outside of the regulated flood hazard area. This system must conform to DEQ regulations for subsurface sewage disposal and will be located down gradient and 100 feet away from the existing well.

The subject property is occupied by an existing well that has supplied domestic water for the last 12 years. The water has been tested for quality and is below maximum allowable contaminant levels for arsenic and nitrates and is free of coliform bacteria and E.Coli. An inventory of 97 well logs in Sections 19 and 24 indicate an adequate supply of groundwater with the average well depth being 114 feet and the average yield being 26 gallons per minute. The only use of water on the property will be by the resident caretaker/manager.

The proposed use, as approved, meets this criterion.

- (d) The proposed use and development shall not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations.**

The subject property is located partially within the Floodway and partially within the "AE" Floodplain zone. The Applicant has warranted that no structures will be constructed within Floodway and that all structures within the "AE" Floodplain zone will be constructed with a reinforced concrete slab foundation one foot above the Base Flood Elevation (BFE). An on-site drainage plan will be engineered at the same time the buildings are engineered.

The proposed use, as approved, meets this criterion.

(7) Property Development Standards. All uses or development permitted by LC 16.290(2) through (4) above, except as may be provided therein, shall comply with the following development standards:

(a) Property Line Setbacks. Structures other than a fence or sign shall be located:

- (i) At least 20 feet from the right-of-way of a State road, County road or a local access public road specified in LC Chapter 15;**
- (ii) At least 10 feet from all other property lines; and**
- (ii) Notwithstanding LC 16.290(7)(a)(ii) above, a structure that contains less than 120 square feet of floor area and that is located more than 10 feet from other structures may be located in the 10 foot setback otherwise required by LC 16.290(7)(a)(ii) above provided it complies with LC 16.290(7)(d) below.**

All proposed structures are at least 10 feet from interior property lines and at least 30 feet from the edge of the public right of way.

(g) Signs.

- (i) Signs shall not extend over a public right-of-way or project beyond the property line.**
- (ii) Signs shall not be illuminated or capable of movement**
- (iii) Signs shall be limited to 200 square feet in area.**

While there are no proposed signs at this time, signage of the proposed use must be consistent with Lane Code 16.290(7)(g).

(h) Parking. Off street parking shall be provided in accordance with LC 16.250.

Lane Code 16.250 PARKING SPACE, HEIGHT, AREA, GENERAL BUILDING AND GENERAL LOT AREA AND WIDTH SETBACK REQUIREMENTS

(2) Nonresidential Private Parking.

- (a) Automobile parking space allowing 300 square feet per automobile (parking, plus driving space) shall be provided and maintained for any new or enlarged building as listed below:**

- (i) **For business or commercial buildings or structures, at least one permanently maintained parking space for every 300 square feet or fraction thereof of floor space within the building, exclusive of automobile parking space.**

The site plan did not show any proposed parking spaces. The applicant is required to provide, at a minimum, 1 space per 300 square feet of office/residence.

Self-Storage

The applicants propose that 47,600 square feet, located within four buildings, be devoted to mini-storage. As discussed above, Lane Code 16.290(4)(s) explicitly incorporates the purpose statement of Lane Code 16.290(1) as an approval criterion. Lane Code 16.290(1)(b) limits allowed uses and development in the Rural Residential District to "... rural residential uses and to other rural uses [*emphasis mine*] compatible with rural residential uses and the uses of nearby lands."

Normally, the language of a purpose statement in a zoning ordinance is not considered to be traditional approval criterion. However, a purpose statement in a land use regulation may be both an explicit statement of the purpose of the regulation and the context for interpreting the provisions of that regulation. In some cases the language may impose an "additional affirmative duty" that must be fulfilled prior to final approval. *Concerned Homeowners v. City of Creswell*, 52 Or LUBA 620, 628 (2006) In the *Concerned Homeowners* case, LUBA found that the purpose statement of one of the city's sub-zoning districts required that the city had to ensure that "traditional residential" uses were not approved unless it was shown that such uses were "necessary to support the primary recreationally-oriented uses." Similarly, the language of Lane Code 16.290(1)(b) suggests that the county not approve uses in the Rural Residential District that are not, in fact, rural.

The purpose statement requires uses allowed by Lane Code 16.290(4)(s) not just be compatible with rural residential uses and other nearby uses but also requires them to be rural in character. The question of whether the 47,000+ square feet of self-storage component of the proposed use is urban or rural is determined by a number of factors, including but not limited to, whether it is commercial or industrial in nature, its size, and the location of its clientele.

Information submitted in support of the application is persuasive in arguing that mini-storage has been traditionally considered to be an industrial use. The fact that mini-storage facilities cater to the general public is apparently outweighed by the size requirements of these uses and the low amount of traffic that is normally generated.

As discussed in the September 2, 2008 Hearings Official decision, the Land Conservation and Development Commission (LCDC) amended Goal 14 to address the intensity of uses outside of urban growth boundaries. The Goal 14 amendments resulted in the adoption of OAR 660-022-0030(10) & (11), that limit the size of industrial structures to 40,000 square feet and the size of

commercial structures to 4,000 square feet, respectively, in non-urban unincorporated communities. Lane County, in turn, has limited the size of industrial structures in rural industrial zones to 35,000 square feet and the size of commercial structures in rural commercial zones to 3,500 square feet.³ The proposed use exceeds the maximum size of an industrial use that can be sited in an arguably more appropriately zoned industrial district by over 12,000 square feet.

The appropriate size of a "rural" use permitted under Lane Code 16.290(4)(s) is determined, at least in part, by the location of its clientele. Thus, if it were shown that 100 percent of the clientele of a mini-storage facility lived in rural Lane County, outside of urban growth boundaries and rural communities, then arguably it would be appropriate to allow the size of that facility to approach the size of industrial structures allowed in the Rural Industrial District. On the other hand, if only a small percentage of the clientele lived in rural Lane County then the use should not be characterized as being "rural" at all.

In the present case the subject property is located between the rural communities of Goshen and Pleasant Hill and only a few miles from the Eugene-Springfield Urban Growth Boundary. No credible evidence has been presented to suggest that more than a small minority of its clients would be from the surrounding rural area and outside a rural community. The argument that the storage of boats and recreational vehicles should be in rural areas near recreational areas does not appear to be relevant to mini-storage.

The mini-storage component of the proposed use, as put forth, is urban in nature and does not comply with Lane Code 16.290(4)(s)(i).

Conclusion

The previous decision on this matter is affirmed, in part, and reversed, in part.

Respectfully Submitted,



Gary Darnielle
Lane County Hearing Official

³ See Lane Code sections 16.292(3)(b)(iii) and 16.291(4)(a), respectively.



APPEAL OF A HEARINGS OFFICIAL DECISION

PUBLIC WORKS DEPARTMENT 125 E 8th AVENUE, EUGENE OR 97401

Planning: 682-3807 Building: 682-3823 Sanitation: 682-3754

For Office Use Only: FILE # PA076721 CODE: BCAPPEAL-C FEE: ~~\$3,490~~ \$ 3762.00Appellant: CECIL SAXON, JR. JKMailing address: 4740 Main Street, Suite A, Springfield, OR 97478Phone: (541) 746-0047 Email: n/aSignature: Cecil SaxonAppellant's Representative: MICHAEL FARTHINGMailing address: P.O. Box 10126, Eugene, OR 97440Phone: (541) 683-1950 Email: mefarthing@yahoo.comSignature: Michael Farthing

Required submittals. Your appeal application will be rejected if it does not contain all the required information.

1. A copy of the decision being appealed, with the department file number. File # PA 07-6721
2. The \$3,490 appeal fee, payable to Lane County. (See the reverse side for important fee information)
3. Indicate the deadline to submit the appeal. (Found in the Hearing Official's Decision) January 15, 2009
4. Check one of the items below to identify your party status with the right to appeal the Hearings Official's decision:

- ☐ I am the owner or contract purchaser of the subject property;
- ☐ I am the applicant for the subject application;
- ☒ Prior to the decision by the Hearings Official, I submitted written testimony into the record
- ☐ I am not one of the persons mentioned above, but wish to appeal the Hearings Official's decision for the reasons explained in my letter.

5. A letter that addresses each of the following three standards:
 - a. The reason(s) why the decision of the Hearings Official was made in error or why the Hearings Official should reconsider the decision;
 - b. An identification of one or more of the following general reasons for the appeal, or request for reconsideration:
 - The Hearings Official exceeded his or her authority;
 - The Hearings Official failed to follow the procedure applicable to the matter;
 - The Hearings Official rendered a decision that is unconstitutional;
 - The Hearings Official misinterpreted the Lane Code, Lane Manual, State Law, or other applicable criteria.
 - c. The Hearings Official should reconsider the decision to allow the submittal for additional evidence not in the record that addresses compliance with the applicable standards or criteria.
6. Any additional information in support of your appeal.

18 03 24 00 04600

Michael E. Farthing
Attorney at Law

462 Kodiak Street
Eugene, Oregon 97401

PO Box 10126
Eugene, Oregon 97440

Office: 541-683-1950 ♦ Fax: 541-344-4144

email: mefarthing@yahoo.com

January 15, 2009

HAND DELIVERED

Lane County Board of Commissioners
c/o Kent Howe, Planning Director
Public Service Building
125 E. 8th Avenue
Eugene, OR 97401

Re: Appeal of Hearing Official Decision
Special Use Permit for RV/Boat Storage/Mini-Storage Facility
PA 07-6721 (McCabe, Applicant)

Chair Sorenson and Commissioners:

On behalf of Cecil Saxon, Jr., I am filing an appeal of the Hearings Official's reconsidered decision of the above-referenced application. The permit would allow a 79,000 square foot recreational vehicle, boat and mini-storage facility to be constructed on a 5-acre parcel located on the south side of Highway 58 and less than a mile east of the highway's intersection with I-5 and the unincorporated community of Goshen. The Subject Property is zoned RR, Rural Residential. Copies of the reconsidered decision, dated January 5, 2009, and the Hearings Official's initial decision, dated September 2, 2008, are attached as Exhibits "A" and "B" respectively. The earlier decision is included because the reconsidered decision incorporated the earlier decision's findings of fact and also because we believe the September 2 decision and analysis should be adopted by the Board in overturning the January 5 reconsidered decision.

INTRODUCTION

The application that is the subject of this appeal requests a special use permit to construct seven (7) commercial buildings (A-G) that would contain 30,980 square feet for 115 RV and boat storage units (Buildings A, B, and G) and 47,600 square feet for 384 self-storage units. There would also be a 900 square feet office/caretaker residence. The total building development, not counting roads and parking areas, would total over 79,000 square feet. The storage units would be available to the general public on an individual basis. Attached as Exhibit "C" is copy of the most recent site plan which shows that the property is essentially filled with building and driveways.

The Director denied the application on several grounds including his determination that the proposed use did not comply with one of the purposes of the RR zone which requires that uses allowed in the RR zone be limited to rural residential uses and "other rural uses" that are compatible with rural residential uses. LC 16.290(1)(b). The Director also found that the size of the proposed storage facility far exceeded the maximum size limits in both the RC Rural Commercial zone (3500 square feet) and the Rural Industrial zone (35,000 square feet) for such facilities and therefore did not qualify as either a rural residential use or "other rural uses" that are compatible with rural residential uses.

The applicant appealed the Director's denial to the Hearings Official and on September 2, 2008, the Hearings Official issued a final decision that affirmed the Director's denial of the special use application. See Exhibit "B". The Hearings Official's analysis was thorough and well-reasoned. He found that the proposed use was, on whole, commercial in nature because it was available to the general public on a client-by-client basis. He also found that because the proposed use far exceeded the size of the same use that would be allowed in a Rural Commercial zone and because its location would serve the Metro Area's population, that it was an urban use. He concluded that such storage facilities could only be approved if they met the size limitations allowed in the County's Rural Commercial (RC) zone which is 3500 square feet.

The applicant appealed that decision and requested the Hearings Official reconsider his decision. Subsequently, the Hearings Official issued his reconsidered decision on January 5, 2009, in which he reversed both his September 2 decision (Exhibit "B") and the Director's initial decision as far as the boat and RV storage facility. He sustained the Director's denial of the self storage facility because it was not consistent with one of the purpose statements of the RR zone which limits allowed uses to rural residential uses and "other rural uses" that are compatible with rural residential uses. As explained below, we believe his rationale is flawed and violates the purpose and intent of the Rural Residential zone as well as the basic premise of Goal 14 which is to direct urban uses inside urban growth boundaries and not allow them to be located on rural land.

The following section addresses the three standards set forth in the County's printed appeal form (Section 5).

APPEAL STANDARDS

- a. The reasons why the decision of the Hearings Official was made in error or why the Hearings Official should reconsider the decision.**

The Hearings Official's reconsidered decision was made in error because he did not apply

a basic tenet of Oregon land use law which is that Goal 14 prohibits urban uses on rural land. This was the basis for his initial decision (September 2) and also the Director's decision. In his reconsidered decision, the Hearings Official resorts to a highly technical and strained analysis of Lane Code 16.290(4)(r) and (s) in which he seems to conclude that he has no choice but to approve any RV/boat storage facility so long as it meets the criteria in Lane Code 16.290(5) and the property development standards in subsection (7).

In doing so, he ignored the purpose statement in LC 16.290(1)(b) which states:

- (b) To promote a compatible and safe rural residential living environment by limiting allowed uses and development to primary and accessory rural residential uses and to other rural uses compatible with rural residential uses and uses of nearby lands.

Without saying so explicitly, the Hearings Official found that the above-quoted purpose statement is not an "external approval standard". We agree that for RV/boat storage facilities, it is not a separate criterion. However, it is the expression of how Goal 14 is to be applied to uses that are allowed in the rural residential zone.

The Hearings Official's interpretation of what is allowed in the RR zone is in error because he failed to consider the fact that the proposed use is a commercial, urban use. He made this finding in the September 2 decision but then ignored it in his January 5 reconsidered decision.

Not all RV/boat storage facilities are allowed in the RR zone. Only those that are "rural" in character should be permitted. The size of this proposed facility, 30,980 square feet, is what makes it urban. The fact that it is open to the general public, as opposed to being accessory or related to a single-use entity, is what makes it commercial. In his September 2 decision, the Hearings Official concluded:

"... In the present case, I believe that because the storage facility serves individual members of the community rather than an industry, it should be characterized as being commercial in nature. Given that characterization, I do not believe that its size can exceed the size limitations placed on commercial uses allowed within, the Rural Commercial District."

P. 7, Ex B. The size limitation in the Rural Commercial District is 3,500 square feet.

Earlier in his September 2 decision, the Hearings Official provided the rationale for why the

proposed facility was urban, and not rural. He concluded:

“The most important litmus test of whether a use is urban or rural concerns the identity of population that is served by the use. In the present case, the applicant has warranted that the proposed storage facility will primarily serve a rural population but the record does not include any evidence supporting this conclusion. The location of the use, however, suggests that a significant percentage of the clientele may be generated by the nearby major urban growth boundary and two rural communities. One purpose of Goal 14 is to focus growth and intensive uses within more urban areas. The placement of these types of uses near urban growth boundaries and rural communities can have the effect of undercutting the effectiveness of those geographically-based, land use borders. Also, the scale of the proposed use does not seem appropriate to rural residential zoning. If the proposed facility existed at the time the Rural Comprehensive Plan was acknowledged, I suspect that it would have been zoned either Rural Commercial or Rural Industrial to better reflect the type of use and its size.”

P.7 Ex B. This holding is consistent with the Code language and other provisions of the Code, specifically the size limitation found in the Rural Commercial and Rural Industrial zones.

Not all storage facilities are alike. Urban facilities should be restricted to urban areas and not allowed on rural lands.

- b. An identification of one or more of the following general reasons for the appeal, or request for reconsideration:**
- **The Hearings Official exceeded his/her authority**
 - **The Hearings Official failed to follow the procedure applicable to this matter**
 - **The Hearings Official rendered a decision that is unconstitutional**
 - **The Hearings Official misinterpreted the Lane Code, Lane Manual, State Law, or other applicable criteria.**

In this case, the Hearings Official misinterpreted Lane Code, as described previously, and also State Law as expressed in LUBA and Court decisions and Oregon Revised Statutes. The

September 2 decision reflects a proper interpretation and application of the Lane Code to this proposed storage use. It is also consistent with State Law and appellate decisions.

As explained in the previous section, the Hearings Official erred by failing to recognize that uses that are allowed in the RR zone must be “rural”. Urban uses, like the 30,000 square foot storage facility that is proposed, cannot and should not be permitted in the RR zone. The Hearings Official acknowledges this fact in his September 2 decision and notes that case law supports this conclusion:

“The application of Goal 14 to uses outside an urban growth boundary that are not inherently urban or rural must be done on a case-by-case basis.⁸ The question is whether the proposed use, as warranted by the applicant, represents an urban use that is not allowed outside of an urban growth boundary or within a rural community without an exception to Goal 14. One relevant factor is whether the use is typically located in urban or rural areas⁹. Also, if the use is commercial in nature, then it is appropriate to ask whose needs are being served by the use. That is, is the use appropriate for and limited to the needs and requirements of the rural area to be served? In a case involving a grocery store that was allowed conditionally in a rural residential district, LUBA pondered whether that use would act as a magnet to shoppers from outside the rural area where it was located.¹⁰

A case closely parallel to this one involved comprehensive plan and zoning amendments that would have allowed RV storage on property adjacent to the McMinville UGB.¹¹ In that case, a similar comparison was made regarding the size of the proposed facility and the square footage constraints found in OAR 660-022-0010. LUBA found that factors concerning location, proximity to an urban growth boundary, and operational characteristics. “. . . particularly the population it is likely to serve” were more a relevant indicator than floor space in a determination of whether a use was “urban.” Further, LUBA noted that because the facility did not appear to be associated with any industry it was probably more accurately characterized as a commercial rather than an industrial use.¹²”

p. 5, Ex B (footnotes omitted). This is a correct interpretation of the law as applied to these kinds of uses that can be both rural and urban in character. The Hearings Official’s September 2

decision is the proper interpretation and is consistent with the purpose and intent of the RR zone and also Goal 14. His January 5 reconsidered decision ignores these cases and the reasoning and analysis that he used in applying them to the proposed storage use.

There is another provision of State Law that the Hearings Official ignored in his reconsidered decision. This is ORS 197.829(1) which states: “(1) The Land Use Board of Appeals shall affirm a local government’s interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government’s interpretation:

- (a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
- (b) Is inconsistent with the purpose for the comprehensive plan or land use regulations;
- (c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
- (d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements. . . .”

(emphasis supplied) When this matter is appealed to LUBA, that appellate body has the authority and direction to review the County’s decision as to whether its “interpretation” is inconsistent with the “purpose” of the land use regulation (RR zone in this case) or the land use goal (Goal 14) that is being implemented.

In this case, the Hearings Official first “interpreted” the Lane Code to not allow urban uses in the RR zone. His January 5 reconsidered decision changes that interpretation by finding that all RV/boat storage facilities, whether urban or rural, must be permitted in the RR zone.

There are now two diametrically opposed “interpretations” before you in this appeal. One, the September 2 decision, is consistent with the “purpose” of the RR zone as stated in LC 16.290(1)(b) and quoted previously. It is also consistent with Goal 14 which requires urban uses to be located within urban growth boundaries. The January 5 reconsidered decision is inconsistent with both these provisions. ORS 197.829(1) directs LUBA to overturn the County’s interpretation if there is such an inconsistency.

Based on this analysis, it makes no sense for the County to approve this use when it most assuredly will be reversed by LUBA. The September 2 decision should be adopted by the Board as its “interpretation” of the Code and Goal 14 as applied to this proposed storage use.

- c. **The Hearings Official should reconsider the decision to allow the submittal for additional evidence not in the record that addresses compliance with the**

applicable standards or criteria.

Additional evidence is not needed in this case. The Hearings Official should reconsider his decision and apply this analysis, findings and conclusion set forth in his September 2 decision..

LC 14.600(3) ELECTIVE BOARD REVIEW CRITERIA

Lane Code 14.600 describes the process for appealing land use decisions of the Hearings Official to the Board of Commissioners. Review by the Board is discretionary and dependent upon a finding by the Board addressing criteria set forth in subsection (3). Those criteria state:

- “(a) The issue is of Countywide significance.
- (b) The issue will reoccur with frequency and there is a need for policy guidance.
- (c) The issue involves a unique environmental resource.
- (d) The Planning Director or Hearings Official recommends review.”

With the exception of subsection (c), each of the criteria has relevance to and is satisfied by this appeal.

Most importantly, I have discussed this matter with Mr. Howe, the County’s Planning Director, and he has indicated he will recommend that the Board review this matter. This fact, alone, satisfies subsection (d) of the elective Board review criteria.

While I am sure Mr. Howe will elaborate in his staff report to the Board as to the reasons for his recommendation, I believe they are based on the precedent that this decision will establish. As explained later, this is one of three applications for RV/boat storage facilities that have been considered by the Director within the last year, all of which would be located on RR-zoned land. The Hearings Official’s decision opens the flood gates to similar proposals for RR-zoned lands throughout the County but especially for properties located near major water bodies, e.g. Fern Ridge Lake and the reservoirs east of Cottage Grove, as well as recreational corridors like Highways 58 and 126. If allowed to stand, there would be no size limit on such facilities.

Beyond the Director’s recommendation that the Board review this appeal, subsections (a) and (b) are applicable to this appeal. As noted above, this decision by the Hearings Official opens all RR-zoned land throughout the County to this type of application. Already, within the last year, there have been two applications for properties abutting Highway 58. In addition to this application, a similar request was denied by the same Hearings Official for the same reasons that were articulated in his September 2 decision in this matter. Brink, PA 07-6355.

On the same day the reconsidered decision was issued, January 5, 2009, the Hearings

Official approved an RV/boat storage facility for property located along the Willamette River and east of Junction City. Banton, PA 08-5496. The total area of this facility is nearly 20,000 square feet. Mr. Saxon did not appeal this approval because of the cost and the location does not directly impact his home and properties in the Goshen area. The Banton decision illustrates our point which is that all RR-zoned land is open to these storage facilities and size is not an issue if the Hearings Official's decision is left in place.

This type of application will likely reoccur as word gets out about the Hearings Official's approval. Board review is essential to provide policy guidance to your staff and particularly the Hearings Official. Also, the public needs to know that RR-zoned properties will not be available for this type of urban commercial development.

Why would anyone place this type of facility inside an urban growth boundary when they could find an RR-zoned parcel near a river, lake or the ocean and develop an RV/boat storage facility. Better yet, if there is a house on the site, a person would pay the going rate for an RR-zoned parcel with the caretaker's house already in place and then establish a commercial storage facility at a price that is considerably less than commercial properties located in a city.

It is important to recognize the significance of the Hearings Official's decision. The same facility, if proposed for property zoned Rural Commercial, would be limited to 3,500 square feet. The facility proposed by this application exceeds 30,000 square feet of building alone. Look at the site plan (Ex C) and see how much area was proposed for development. At least the Hearings Official sustained the Director's decision which denied the self-storage units. However, allowing the RV/boat storage facility still creates bad precedent that is contrary to and inconsistent with Goal 14 and the purpose of the RR zone.

HEARINGS OFFICIAL RECONSIDERATION

As noted at the outset of this appeal statement, the Hearings Official seems to believe that the current wording of the Code and specifically LC 16.290(4)(r) which allows RV/boat storage as a specially permitted use in the RR zone, does not allow consideration of the zone's purpose statement and Goal 14. We request the Hearings Official to reconsider this position.

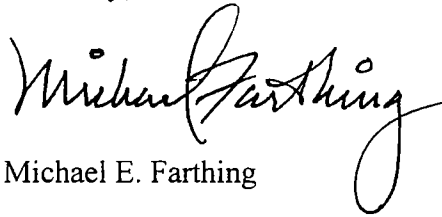
The September 2 decision (Ex B) is legally defensible and, in my opinion, would be sustained at LUBA. All of the case law cited and rationale used in that decision and which supported the Director's denial was ignored and replaced with a hyper-technical interpretation of the Code provision that allows any size of RV/boat storage as a specially permitted use. What is ignored is the simple fact that only rural storage facilities are allowed in the RR zone. It is not all storage facilities that can be placed in the RR zone. This requires interpretation and common sense.

Board of Commissioners
January 15, 2009
Page 9

The Hearings Official's January 5 decision even states that his earlier decision was an "interpretation". P.3, Ex A. If the first decision was an "interpretation", then certainly the January 5 reconsidered decision was a "reinterpretation" of the same cases, Code provisions and State law, including Goal 14. The point is this: these facilities should be rural in character. The Hearings Official has already made a finding that the proposed facility is "urban" and "commercial". The cases cited in the September 2 decision allow requests like this one to be evaluated on a case-by-case basis. Washington County Farm Bureau v. Washington County, 17 Or LUBA 861, 875 (1989). A determination has been made that the proposed facility is "urban" and that means it should not be allowed in the RR zone.

We urge the Hearings Official to reverse his reconsidered decision and reinstate his September 2 decision.

Sincerely,

A handwritten signature in black ink, reading "Michael Farthing". The signature is fluid and cursive, with the first name "Michael" and last name "Farthing" clearly distinguishable.

Michael E. Farthing

Enclosure

cc: Cecil Saxon, JR.
Jim Spickerman
All Commissioners

**LANE COUNTY HEARINGS OFFICIAL
RECONSIDERATION OF A HEARINGS OFFICIAL DENIAL OF A REQUEST FOR A
SPECIAL USE PERMIT TO ALLOW FOR AN RV, BOAT AND SEGMENTED SELF-
STORAGE FACILITY WITHIN A RURAL RESIDENTIAL DISTRICT**

Application Summary

Don & Cheryl McCabe, 362 North 42nd Street, Springfield, Oregon 97478. The applicants requested a special use permit to allow a recreational vehicle, boat, and segmented self-storage facility in the Rural Residential (RR5) Zone, pursuant to Lane Code 16.290(4)(r) & (s). The Lane County Planning Director denied the request on April 15, 2008 and a timely appeal was filed by the applicants.

A hearing before the Lane County Hearings Official was held on July 10, 2008 and a decision affirming the Planning Director was issued on September 2, 2008. A timely appeal was filed and the Hearings Official agreed to reconsider the September decision.

Parties of Record

Don & Cheryl McCabe
Thomas & Bonnie Woolley

Mike Farthing

Jim Spickerman

Application History

Reconsideration Hearing Date: November 6, 2008
(Record Held Open Until December 18, 2008)

Reconsidered Decision Date: January 5, 2008

Appeal Deadline

An appeal must be filed within 10 days of the issuance of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

Lane Code 16.290(4)(r) & (s)
Lane Code 16.290(5)

Ex A
JANUARY 5, 2009

Findings of Fact

1. The applicants propose a facility to store recreational vehicles (RVs), boats and household goods. It will be open Monday through Saturday, 10:00 a.m. to 6:00 p.m. and is closed Sunday. A manager will be present 24 hours-a-day, seven days a week. The facility will be entirely enclosed with a six-foot tall chain link fence.
2. The findings of fact of the September 2, 2008 Hearings Official decision in PA 07-6721 are incorporated by reference except where explicitly modified by this decision.
3. The State Fire Marshal has revised previous comments and now finds that the applicant's site plan adequately provides for the access and circulation of fire apparatus to the proposed use.
4. The site plan (updated 12/26/07) shows the north side of Building A to be 50 feet from the right-of-way of Highway 58. Interpretation of available flood plain maps indicates that the area between the highway right-of-way and Building A is located outside of the flood hazard area.
5. The application consists of 7 storage buildings; A-G.¹ Buildings A, B and G contain 115 units within 30,980 square feet for the storage of boats and recreational vehicles. Buildings C through F contain 47,600 square feet devoted to mini-storage.

Decision

THE SEPTEMBER 2, 2008 DECISION REGARDING THE MCCABE REQUEST (PA 07-6721) FOR A SPECIAL USE PERMIT TO CONSTRUCT AN RV, BOAT AND SELF-STORAGE FACILITY IS AFFIRMED, IN PART, AND REVERSED, IN PART.

THE RV AND BOAT STORAGE COMPONENT OF THE REQUEST IS APPROVED, subject to the following conditions:

1. Outdoor lighting shall be as warranted by the applicant with no spill-over light from the proposed facility.
2. The applicant shall submit a revised site plan showing the location of the buildings housing the recreational vehicles and boats, the office/caretaker residence and the required parking spaces.
3. The applicant shall procure all necessary building and sanitation permits prior to expanding the current operation. In this regard, the applicant shall maintain fire code standards as they pertain to vehicle storage.
4. The applicant shall procure a Floodplain Special Use Permit prior to the construction of the structures.
5. The proposed recreational vehicle and boat storage facility shall be operated as warranted by the applicant.

¹ See Site Plan dated 12/26/07.

6. Signage of the proposed use must be consistent with Lane Code 16.290(7)(g).
7. The proposed use shall be equipped with a storm drainage system designed with a capacity to treat storm runoff from new impermeable surfaces on the subject property for up to 5-year storm events.

THE MINI-STORAGE COMPONENT OF THE REQUEST IS DENIED.

Justification for Decision (Conclusion)

This application is evaluated pursuant to the uses subject to Hearings Official approval and applicable criteria found in Lane Code 16.290(4)(r) & (s) and Lane Code 16.290(5). Lane Code 16.290(4)(r) and (s) allow storage facilities for boats and recreational vehicles and similar uses, respectively, subject to compliance with Lane Code 16.290(5).

The September 2, 2008 decision in this matter affirmed the Planning Director's denial of this application on the basis of its inconsistency with Statewide Planning Goal 14. I now believe that this decision, as it applied to the storage of boats and recreational vehicles, was not a correct interpretation of the code and this reasoning has been applied to an intervening decision.²

Boat and Recreational Vehicle Storage

The applicant proposes 115 storage units, consisting of about 30,980 square feet for the storage of boats and recreational vehicles. The applicant has argued that the language of Lane Code 16.290(4)(r) is clear that storage facilities for boats and recreational vehicles may be allowed subject only to the approval criteria of Lane Code 16.290(5), and that there is no ambiguity to explain. However, the ambiguity of a provision may not appear on its face but may become apparent only when placed in its statutory context or framework. The opponents argue that this is the case in the present situation and point to the purpose statement of the Rural Residential District as part of the statutory context that must be considered. In specific, they cite Lane Code 16.290(1)(b), which provides:

- (b) *To promote a compatible and safe rural residential living environment by limiting allowed uses and development to primary and accessory rural residential uses and to other rural uses compatible with rural residential uses and the uses of nearby lands;*

Whether the language of Lane Code 16.290(1) can be considered as creating an approval standard is a question of statutory construction. One of the fundamental principles of statutory construction, and one memorialized in ORS 174.010, is that a court should not insert what has been omitted nor omit what has been inserted from a statute. In this regard, the language of Lane Code 16.290(4)(s) is instructive. Subsection (4)(s) concerns "uses and development similar to uses and development allowed by Lane Code 16.290(2) & (4)" and requires, in part, that such uses be consistent with the purpose of LC 16.290(1). By its explicit reference to subsection (1), the Board of Commissioners have made a conscious decision to not require the same level of

² *Application of Steve and Denise Banton, Lane County Hearings Official Decision in PA 08-5496 (January 5, 2009)*

scrutiny to other uses listed under LC 16.290(4). By the same token, several uses in LC 16.290(4), such as animal hospitals, lodges and grange halls, have square footage requirements. Again, no such restrictions apply to LC 16.290(4)(r).

In summary, neither the plain language of Lane Code 16.290(4)(r) nor its context within Lane Code 16.290(4) support a conclusion that there are any external approval standards, other than those found in Lane Code 16.290(5), that apply to the storage of boats and recreational vehicles within the rural residential district.

- (5) Approval Criteria. Uses and development in LC 16.290(4)(a) through (s) above, except for telecommunication facilities allowed in LC 16.290(4)(d) above, shall comply with the requirements in LC 16.290(5) below. Telecommunications facilities allowed by LC 16.290(4)(d) above shall comply with the requirements in LC 16.264.**

- (a) Shall not create significant adverse impacts on existing uses on adjacent and nearby lands or on uses permitted by the zoning of adjacent or nearby undeveloped lands;**

The proposed use is passive in that there is no sale of goods and the only traffic is that of clients visiting the site to store boats or RVs or to move one of those vehicles. It will be located on that portion of the subject property adjacent to Highway 58.

Parcels to the east and south are actively farmed with alfalfa and hay as their principle crops. The owners of these properties do not believe that the proposed use is incompatible with their agricultural pursuits.

The parcel adjacent to the west is zoned rural residential and apparently is occupied by a nonconforming or illegal business that involves the open storage of vehicles and the indoor manufacture of RV axles. Properties further to the west include small residences on rural residentially-zoned land and the Highway 58 Market, which has RC zoning.

Properties across Highway 58 are occupied by two active businesses, Lanze Electric, an electrical contractor, Franklin Contracting, and Highway 58 Garage. These uses are active and include offices, storage yards and warehousing.

The applicants' Traffic Impact Analysis for the RV, boat and mini-storage uses shows an estimated ten vehicles entering and leaving the subject property during peak hours. The proposed use is expected to generate 16 to 30 traffic movements per day with an average of about 16 per day. Trip generation mini-warehouses is expected to be less than that of boat and recreational vehicle storage units.

The proposed use is largely passive in nature with the only major impacts on surrounding properties coming from very light traffic generation and the aesthetic impact of the proposed storage buildings. The latter impact does not have a

significant impact since industrial development is located across Highway 58 and a business of some kind operates adjacent to the west.

Trespass does not appear to be a legitimate concern as the proposed facility will be entirely fenced and a manager is constantly present. Fire safety is also not a major concern as the Deputy State Fire Marshal has found the circulation pattern of the site adequate and the property lies within the Goshen Rural Fire Protection District. Additionally, as a condition of approval, the construction and layout of buildings must conform to fire code standards as they pertain to storage buildings of the size proposed.

The proposed use, as conditioned by this decision, meets this criterion.

- (b) **Where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby lands;**

Conditions of approval are attached to this decision. In specific, storm water generated by the proposed use must be treated on-site.

- (c) **The proposed use and development shall not exceed the carrying capacity of the soil or of the existing water supply resources and sewer service. To address this requirement, factual information shall be provided about any existing or proposed sewer or water systems for the site and the site's ability to provide on-site sewage disposal and water supply if a community water or sewer system is not available; and**

A new septic tank system is proposed and will be constructed outside of the regulated flood hazard area. This system must conform to DEQ regulations for subsurface sewage disposal and will be located down gradient and 100 feet away from the existing well.

The subject property is occupied by an existing well that has supplied domestic water for the last 12 years. The water has been tested for quality and is below maximum allowable contaminant levels for arsenic and nitrates and is free of coliform bacteria and E.Coli. An inventory of 97 well logs in Sections 19 and 24 indicate an adequate supply of groundwater with the average well depth being 114 feet and the average yield being 26 gallons per minute. The only use of water on the property will be by the resident caretaker/manager.

The proposed use, as approved, meets this criterion.

- (d) **The proposed use and development shall not result in public health hazards or adverse environmental impacts that violate state or federal water quality regulations.**

The subject property is located partially within the Floodway and partially within the "AE" Floodplain zone. The Applicant has warranted that no structures will be constructed within Floodway and that all structures within the "AE" Floodplain zone will be constructed with a reinforced concrete slab foundation one foot above the Base Flood Elevation (BFE). An on-site drainage plan will be engineered at the same time the buildings are engineered.

The proposed use, as approved, meets this criterion.

(7) Property Development Standards. All uses or development permitted by LC 16.290(2) through (4) above, except as may be provided therein, shall comply with the following development standards:

(a) Property Line Setbacks. Structures other than a fence or sign shall be located:

- (i) At least 20 feet from the right-of-way of a State road, County road or a local access public road specified in LC Chapter 15;**
- (ii) At least 10 feet from all other property lines; and**
- (ii) Notwithstanding LC 16.290(7)(a)(ii) above, a structure that contains less than 120 square feet of floor area and that is located more than 10 feet from other structures may be located in the 10 foot setback otherwise required by LC 16.290(7)(a)(ii) above provided it complies with LC 16.290(7)(d) below.**

All proposed structures are at least 10 feet from interior property lines and at least 30 feet from the edge of the public right of way.

(g) Signs.

- (i) Signs shall not extend over a public right-of-way or project beyond the property line.**
- (ii) Signs shall not be illuminated or capable of movement**
- (iii) Signs shall be limited to 200 square feet in area.**

While there are no proposed signs at this time, signage of the proposed use must be consistent with Lane Code 16.290(7)(g).

(h) Parking. Off street parking shall be provided in accordance with LC 16.250.

Lane Code 16.250 PARKING SPACE, HEIGHT, AREA, GENERAL BUILDING AND GENERAL LOT AREA AND WIDTH SETBACK REQUIREMENTS

(2) Nonresidential Private Parking.

- (a) Automobile parking space allowing 300 square feet per automobile (parking, plus driving space) shall be provided and maintained for any new or enlarged building as listed below:**

- (i) **For business or commercial buildings or structures, at least one permanently maintained parking space for every 300 square feet or fraction thereof of floor space within the building, exclusive of automobile parking space.**

The site plan did not show any proposed parking spaces. The applicant is required to provide, at a minimum, 1 space per 300 square feet of office/residence.

Self-Storage

The applicants propose that 47,600 square feet, located within four buildings, be devoted to mini-storage. As discussed above, Lane Code 16.290(4)(s) explicitly incorporates the purpose statement of Lane Code 16.290(1) as an approval criterion. Lane Code 16.290(1)(b) limits allowed uses and development in the Rural Residential District to "... rural residential uses and to other rural uses [*emphasis mine*] compatible with rural residential uses and the uses of nearby lands."

Normally, the language of a purpose statement in a zoning ordinance is not considered to be traditional approval criterion. However, a purpose statement in a land use regulation may be both an explicit statement of the purpose of the regulation and the context for interpreting the provisions of that regulation. In some cases the language may impose an "additional affirmative duty" that must be fulfilled prior to final approval. *Concerned Homeowners v. City of Creswell*, 52 Or LUBA 620, 628 (2006) In the *Concerned Homeowners* case, LUBA found that the purpose statement of one of the city's sub-zoning districts required that the city had to ensure that "traditional residential" uses were not approved unless it was shown that such uses were "necessary to support the primary recreationally-oriented uses." Similarly, the language of Lane Code 16.290(1)(b) suggests that the county not approve uses in the Rural Residential District that are not, in fact, rural.

The purpose statement requires uses allowed by Lane Code 16.290(4)(s) not just be compatible with rural residential uses and other nearby uses but also requires them to be rural in character. The question of whether the 47,000+ square feet of self-storage component of the proposed use is urban or rural is determined by a number of factors, including but not limited to, whether it is commercial or industrial in nature, its size, and the location of its clientele.

Information submitted in support of the application is persuasive in arguing that mini-storage has been traditionally considered to be an industrial use. The fact that mini-storage facilities cater to the general public is apparently outweighed by the size requirements of these uses and the low amount of traffic that is normally generated.

As discussed in the September 2, 2008 Hearings Official decision, the Land Conservation and Development Commission (LCDC) amended Goal 14 to address the intensity of uses outside of urban growth boundaries. The Goal 14 amendments resulted in the adoption of OAR 660-022-0030(10) & (11), that limit the size of industrial structures to 40,000 square feet and the size of

commercial structures to 4,000 square feet, respectively, in non-urban unincorporated communities. Lane County, in turn, has limited the size of industrial structures in rural industrial zones to 35,000 square feet and the size of commercial structures in rural commercial zones to 3,500 square feet.³ The proposed use exceeds the maximum size of an industrial use that can be sited in an arguably more appropriately zoned industrial district by over 12,000 square feet.

The appropriate size of a "rural" use permitted under Lane Code 16.290(4)(s) is determined, at least in part, by the location of its clientele. Thus, if it were shown that 100 percent of the clientele of a mini-storage facility lived in rural Lane County, outside of urban growth boundaries and rural communities, then arguably it would be appropriate to allow the size of that facility to approach the size of industrial structures allowed in the Rural Industrial District. On the other hand, if only a small percentage of the clientele lived in rural Lane County then the use should not be characterized as being "rural" at all.


In the present case the subject property is located between the rural communities of Goshen and Pleasant Hill and only a few miles from the Eugene-Springfield Urban Growth Boundary. No credible evidence has been presented to suggest that more than a small minority of its clients would be from the surrounding rural area and outside a rural community. The argument that the storage of boats and recreational vehicles should be in rural areas near recreational areas does not appear to be relevant to mini-storage.

The mini-storage component of the proposed use, as put forth, is urban in nature and does not comply with Lane Code 16.290(4)(s)((i).

Conclusion

The previous decision on this matter is affirmed, in part, and reversed, in part.

Respectfully Submitted,



Gary Darnielle
Lane County Hearing Official

³ See Lane Code sections 16.292(3)(b)(iii) and 16.291(4)(a), respectively.

**LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR DENIAL OF A REQUEST FOR A SPECIAL
USE PERMIT TO ALLOW FOR AN RV, BOAT AND SEGMENTED SELF-STORAGE
FACILITY WITHIN A RURAL RESIDENTIAL DISTRICT**

Application Summary

Don & Cheryl McCabe, 362 North 42nd Street, Springfield, Oregon 97478. The applicants request a special use permit to allow a recreational vehicle, boat, and segmented self-storage facility in the Rural Residential (RR5) Zone, pursuant to Lane Code 16.290(4)(r) & (s). The Lane County Planning Director denied the request on April 15, 2008 and a timely appeal was filed by the applicants.

Parties of Record

Don & Cheryl McCabe
Thomas & Bonnie Woolley

Mike Farthing

Jim Spickerman

Application History

Hearing Date: July 10, 2008
(Record Held Open Until August 5, 2008)

Decision Date: September 2, 2008

Appeal Deadline

An appeal must be filed within 10 days of the issuance of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

Lane Code 16.290(4)(r) & (s)
Lane Code 16.290(5)

Findings of Fact

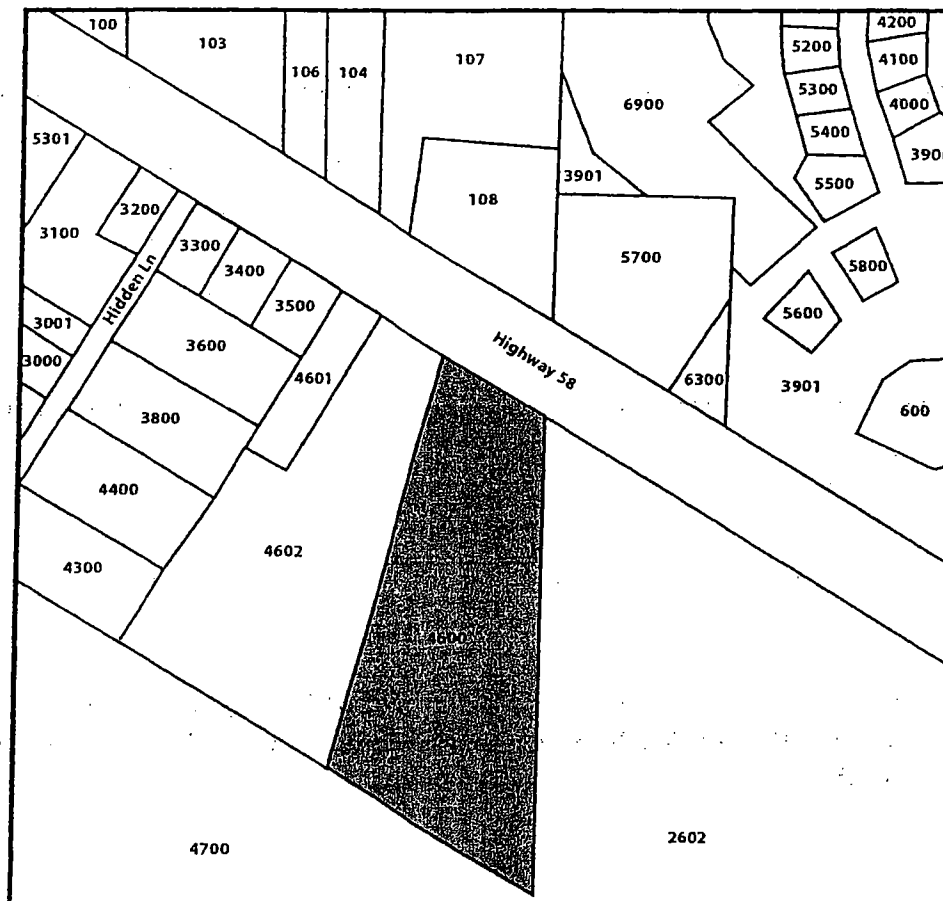
1. The property subject to this application, hereinafter referred to as the "subject property," is located east of the rural community of Goshen on the south of State Hwy 58. The subject property is 5.0 acres in size, has a site address of 34570 Highway 58, Eugene and can be identified as Tax Lot 4600, Assessor's Map 18-03-24. It is located on plot 426, is

**Ex B
SEPTEMBER 2, 2008**

zoned RR-5/RCP, and lies within "developed and committed" Exception Area 426-2. The subject property lies about one mile from the Community of Goshen and several miles from the Community of Pleasant Hill. It is several miles from the Eugene-Springfield Urban Growth Boundary.

2. The findings of the Planning Director's April 15, 2008 decision are adopted by reference except where explicitly modified by this decision.
3. The applicant is proposing to build seven (7) commercial buildings to store recreational vehicles, boats, and segmented self-storage units. The Applicant is proposing 115 RV/boat units and 384 self-storage units, totaling over 79,000 square feet in floor area. One of the buildings will also include a 900 square foot office/caretaker residence. The site is currently developed with a dwelling, a garage, a driveway, a septic system, and a well.
4. The subject property is bordered to the south and east by land zoned Exclusive Farm Use that is currently being farmed with alfalfa and hay. It is bordered on the north, across Highway 58, by land zoned Rural Industrial, and on the west by property zoned Rural Residential (RR-5). Figure 1 depicts the subject property and surrounding tax lots.

Figure 1



More specifically, tax lot 4602, adjacent on the west and zoned RR-5, is occupied with a dwelling and outbuildings and apparently is being used a business involving deliveries, outdoor storage of vehicles, and the indoor manufacturing of RV axles. The storage area occurs on the southern one-half of the property, probably not visible from Highway 58. The remainder of properties immediately to the West are clustered on Hidden Lane and are composed of small residences on substandard lots zoned RR-5. Also located in this area is the Highway 58 Market, located on tax lot 3100 and zoned Rural Commercial.

Directly across Highway 58 from the subject property are tax lots 5700 and 108, zoned Rural Commercial and Rural Industrial, respectively. These tax lots are occupied by Lantz Electric, an electrical contractor with fenced storage yards and offices with some warehousing. To the north of Lantz Electric, on tax lots 107 and 106 are, respectively, Franklin Contracting and the Highway 58 Garage. These tax lots are zoned Rural Industrial. Tax lots 104 and 105, located to the northwest, are vacant. To the west of these parcels is tax lot 103, zoned Rural Industrial, and occupied with a golf driving range.

A 90-lot gated mobile home park called Staffordshire is located about 250 feet to the northwest and across Highway 58 from the subject property. The applicant warrants that residents of this housing area and other properties in the surrounding areas will be the customers and users of the proposed project. This statement is not supported by evidence in the record.

Property adjacent to the south and east is zoned Exclusive Farm Use and is actively farmed for alfalfa and hay. The two adjacent lots, tax lot 4700 and tax lot 2602, are occupied with residences, the closest of which is 1000 feet from the subject property.

5. The State Fire Marshal states in her comments that current configuration does not meet Oregon Fire Code (OFC) regarding access for fire apparatus as well as in-adequate turn around areas.
6. The subject property is also located partially within the Floodway and partially within the "AE" Floodplain zone. The existing subsurface sewage disposal system is located within the floodplain and the applicant intends to relocate it outside of the floodplain if the proposed use is approved. It is not clear where the disposal system can be relocated as the entire property except for a raised fringe parallel to Highway 58 lies within the AE Floodplain Zone or the floodway.

Decision

THE PLANNING DIRECTOR'S DENIAL OF THE MCCABE REQUEST (PA 07-6721) FOR A SPECIAL USE PERMIT TO CONSTRUCT AN RV, BOAT AND SELF-STORAGE FACILITY IS AFFIRMED.

Justification for Decision (Conclusion)

This application is evaluated pursuant to the uses subject to Hearings Official approval and applicable criteria found in Lane Code 16.290(4)(r) & (s) and Lane Code 16.290(5). Lane Code 16.290(4)(r) and (s) allow storage facilities for boats and recreational vehicles and similar uses, respectively, subject to compliance with Lane Code 16.290(5).

It has been argued that besides the criteria incorporated by Lane Code 16.290(4)(s) and Lane Code 16.290(5), a consistency analysis with Statewide Planning Goal 14 should be applied. A similar analysis was applied recently by this hearings official in another appeal of the Planning Director's denial of a special use permit request for an RV and boat storage facility.¹ That facility was located not far from the subject property and on property also zoned RR-5.

It has been suggested that the proposed storage facility, primarily because of the size of its footprint and the location of its clients, is an urban use and, as such, may not be permitted in the Rural Residential District. The argument is based upon the Curry County case,² where the Land Conservation and Development Commission (LCDC) amended Goal 14 to address intensity of uses outside of urban growth boundaries. The argument continues that because OAR 660-022-0030(10) & (11) limits the size of industrial structures to 40,000 square feet and the size of commercial structures to 4,000 square feet, respectively, in non-urban unincorporated communities, it can be presumed that development outside of rural communities must be less intense. The opponents also note that Lane County has limited the size of industrial structures in rural industrial zones to 35,000 square feet and the size of commercial structures in rural commercial zones to 3,500 square feet.³ The applicant has proposed storage facilities that cover over 79,000 square feet or about 36 percent of the subject property.

Traditionally, it has been thought that ORS 197.175(2)(d) shielded land use decisions applying acknowledged land use or comprehensive plan provisions from goal or administrative rule compliance scrutiny.⁴ The adoption of ORS 197.829(1)(d) in 1995, however, has muddled the water. This provision allows LUBA to overrule a local government's interpretation of an acknowledged land use regulation if the interpretation is contrary to state statute, land use goal or rule that the provision implements. I believe the law in this area is generally as follows:

- Compliance of an acknowledged land use or plan provision with the Statewide Planning Goals or LCDC administrative rules cannot be directly challenged but a local government's interpretation of those provisions may be as long as the challenge is not based or dependent upon the proposition that the acknowledged provision itself does not comply with a goal or rule.⁵

¹ *Application of Mark and Kellie Brink*, Lane County Hearings Official Decision in PA 07-6355 (August 27, 2008)

² *1000 Friends of Oregon v. Curry County*, 301 Or 447 (1986)

³ See Lane Code sections 16.292(3)(b)(iii) and 16.291(4)(a), respectively.

⁴ See *City of Corvallis v. Benton County*, 16 Or LUBA 488, 500 (1998).

⁵ *Friends of Neubeck Hill v. Philomath*, 139 Or App 39, 49, rev den 323 Or 136 (1996).

- If a use is allowed by statute in a rural area then it cannot be challenged under Goal 14 because it is a statutorily recognized exception to that rule.⁶

In the present case, the proposed use is allowed in the Rural Residential District, a land use regulation that has been acknowledged by LCDC.⁷ The Planning Director has not suggested that Lane Code 16.290(4)(r) and (s) does not comply with Goal 14 but has essentially opined that an interpretation of these provisions that would allow the a storage facility as large as the proposed use would violate that goal.

The application of Goal 14 to uses outside an urban growth boundary that are not inherently urban or rural must be done on a case-by-case basis.⁸ The question is the whether the proposed use, as warranted by the applicant, represents an urban use that is not allowed outside of an urban growth boundary or within a rural community without an exception to Goal 14. One relevant factor is whether the use is typically located in urban or rural areas.⁹ Also, if the use is commercial in nature, then it is appropriate to ask whose needs are being served by the use. That is, is the use appropriate for and limited to the needs and requirements of the rural area to be served? In a case involving a grocery store that was allowed conditionally in a rural residential district, LUBA pondered whether that use would act as a magnet to shoppers from outside the rural area where it was located.¹⁰

A case closely parallel to this one involved comprehensive plan and zoning amendments that would have allowed RV storage on property adjacent to the McMinville UGB.¹¹ In that case, a similar comparison was made regarding the size of the proposed facility and the square footage constraints found in OAR 660-022-0010. LUBA found that factors concerning location, proximity to an urban growth boundary, and operational characteristics, "... particularly the population it is likely to serve..." were more a relevant indicator than floor space in a determination of whether a use was "urban." Further, LUBA noted that because the facility did not appear to be associated with any industry it was probably more accurately characterized as a commercial rather than an industrial use.¹²

As pointed out previously, a Planning Director denial of similar facility, located in the same exception area as the subject property, was recently affirmed by this hearings official. The applicant in that case identified a number of large RV and boat storage facilities located in unincorporated Lane County outside of rural communities or urban growth boundaries. Most of these facilities, however, occupied land that was zoned Industrial. That applicant also directed the hearing official's attention to a 90,000 square foot RV and boat storage facility permitted in 2004 by the Planning Director on land zoned RR-5. The decision affirming the Planning Director's denial pointed out that there is no requirement that a local government decision be

⁶ *Jackson Cty. Citizens' League v. Jackson Cty.*, 171 Or App 149 (2000).

⁷ Lane Code 16.290, as it currently exists, was created through the adoption of Ordinance No. 6-02; subsequently acknowledged by LCDC in 2002.

⁸ *Washington County Farm Bureau v. Washington County*, 17 Or LUBA 861, 875 (1989)

⁹ *Shaffer v. Jackson County*, 17 Or LUBA 922 (1989).

¹⁰ *Conarow v. Coos County*, 2 Or LUBA 190, 193 (1981).

¹¹ *Friends of Yamhill County v. Yamhill County*, 49 Or LUBA, 541, *aff'd w/o opinion* 201 Or App 528 (2005)

¹² The contested zoning provisions allowed mini-storage in addition to the storage of boats and vehicles.

consistent with past decisions, only that it be correct when made. *Okeson v. Union Co.*, 10 Or LUBA 1, 5 (1983).

An RV/boat storage and mini-storage facility has a foot in both the industrial and commercial categories. The term "storage" usually connotes an industrial use and the Institute of Traffic Engineers treats storage, including mini-storage units, as an industrial use for purposes of traffic generation. On the other hand, industrial storage is usually associated with a particular industry while the proposed use serves the general public, on a client-by-client basis. OAR 660-022-0010(1) defines "commercial use" as "the use of land primarily for the retail sale of products or services, including offices." Subsection (4) of this provision defines "industrial use" as "the use of land primarily for the manufacture, processing, storage, or wholesale distribution of products, goods, or materials." It seems that the proposed use can most accurately be described as a commercial use as it involves the retail sale of a service; the storage of boats, recreational vehicles and household goods.

The following is an analysis of factors that might argue in a determination of whether the proposed storage facility should be characterized as an urban or a rural use. Factors that support a conclusion that the use is urban in nature are as follows:

- The scale of the proposed use, as measured by its structural footprint, is nearly twice that of the largest industrial use permitted in a non-urban, rural community. The operational floor area of the proposed use exceeds the maximum size of industrial uses allowed in the Rural Industrial District by 34,000 square feet and of commercial uses allowed in the Rural Commercial District by 75,500 square feet.
- The subject property lies a few miles from the Eugene-Springfield Urban Growth Boundary and is located between two rural communities.
- There is no evidence in the record that substantiates the applicant's conclusion that the proposed facility will serve rural needs.
- Lane Code 10.170-10(9), which applies to property within an urban growth boundary, allows for storage buildings for household or consumer goods. (Limited Industrial District). This is not the case with 16.292(3)(b).
- There has been no showing that there is insufficient, suitable land for the use within the Eugene-Springfield Urban Growth Boundary.

Factors that support a conclusion that the use is rural in nature are as follows:

- There appears to be little impact on the neighborhood from traffic generated by the proposed use. The record suggests that most of the impacts from the proposed use on nearby properties will be minimal but, as explained below, this analysis is not complete.
- The predominant character of the neighborhood is a mixture of traditional residential uses with a few commercial and industrial uses. Several properties located across Highway 58 are zoned either Rural Commercial or Rural Industrial.
- Lane Code 16.290 has been acknowledged as being in compliance with the Statewide Planning Goals and the lack of a structural footprint limitation of storage facilities was a

conscious one as other uses allowed by the Rural Residential District are subject to size limitations.¹³

The most important litmus test of whether a use is urban or rural concerns the identity of population that is served by the use. In the present case, the applicant has warranted that the proposed storage facility will primarily serve a rural population but the record does not include any evidence supporting this conclusion. The location of the use, however, suggests that a significant percentage of the clientele may be generated by the nearby major urban growth boundary and two rural communities. One purpose of Goal 14 is to focus growth and intensive uses within more urban areas. The placement of these types of uses near urban growth boundaries and rural communities can have the effect of undercutting the effectiveness of those geographically-based, land use borders. Also, the scale of the proposed use does not seem appropriate to rural residential zoning. If the proposed facility existed at the time the Rural Comprehensive Plan was acknowledged, I suspect that it would have been zoned either Rural Commercial or Rural Industrial to better reflect the type of use and its size.

In the final analysis, I cannot fault the Planning Director's decision to deny the application on the basis of inconsistency with Statewide Planning Goal 14. However, the Director's decision does not articulate the standard that must be met in order for the applicant to gain approval. It has a responsibility to do so. *Philippi v. City of Sublimity*, 10 Or LUBA 24, 30-31 (1984). In the present case, I believe that because the storage facility serves individual members of the community rather than an industry, it should be characterized as being commercial in nature. Given that characterization, I do not believe that its size can exceed the size limitations placed on commercial uses allowed within the Rural Commercial District.

Lane Code 16.290(5) requires that uses and development in LC 16.290(4)(a) through (s), except for telecommunication facilities, comply with the requirements of LC 16.290(5). Lane Code 16.290(5)(a) requires that these uses not create significant adverse impacts on existing uses on adjacent and nearby lands or on uses permitted by the zoning of adjacent or nearby undeveloped lands. While the applicant has generally identified the impacts of the proposed development and the existing uses in the area, there has been no comparison of these impacts with other uses that could be allowed within the rural residential, rural commercial or rural industrial zones. Compliance with Lane Code 16.290(5)(a) cannot be shown without this analysis.

The mini-storage aspect of the proposed use must be shown to be consistent with the standards of Lane Code 16.290(4)(s)(i)-(v). Lane Code 16.290(4)(s)(iii) requires the proposed use not exceed the carrying capacity of the soil or of the existing water supply resources and sewer service. The subject property is currently served by a subsurface sewage disposal system that is located within the floodplain. The applicant has warranted that this system will be moved to an area that is outside of both the floodplain and floodway. However, the computer-generated floodplain map indicates that the only portion of the subject property outside either of those two


¹³ Lane Code Sections 16.290(4)(j) and (o), respectively, limit the size of animal hospitals outside communities and lodges and grange halls outside communities to 3,000 square feet.

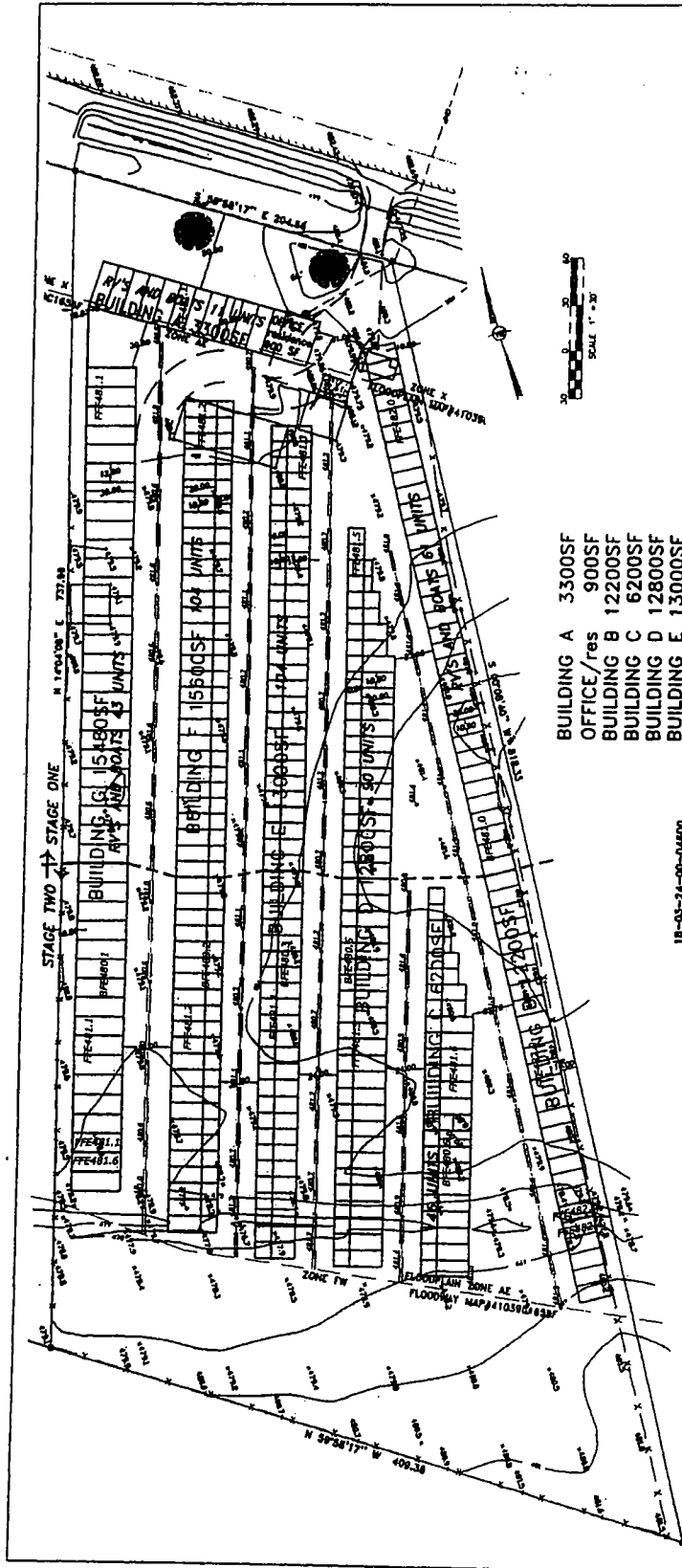
zones lies in a narrow strip of land parallel to Highway 58. There is insufficient evidence in the record to indicate that this land is large enough for the placement of a new system and drainfield and thus that it will be feasible to relocate the current sewage system outside of the floodplain.

Conclusion

The Planning Director's determination that the proposed use should be denied due to inconsistency with Statewide Planning Goal 14 is affirmed.

Respectfully Submitted,


Gary Darnielle
Lane County Hearing Official



BENCHMARK DATUM

BENCHMARK DATUM
18-03-24-00-04800
3450 HIGHWAY 58
EUGENE, OR 97405

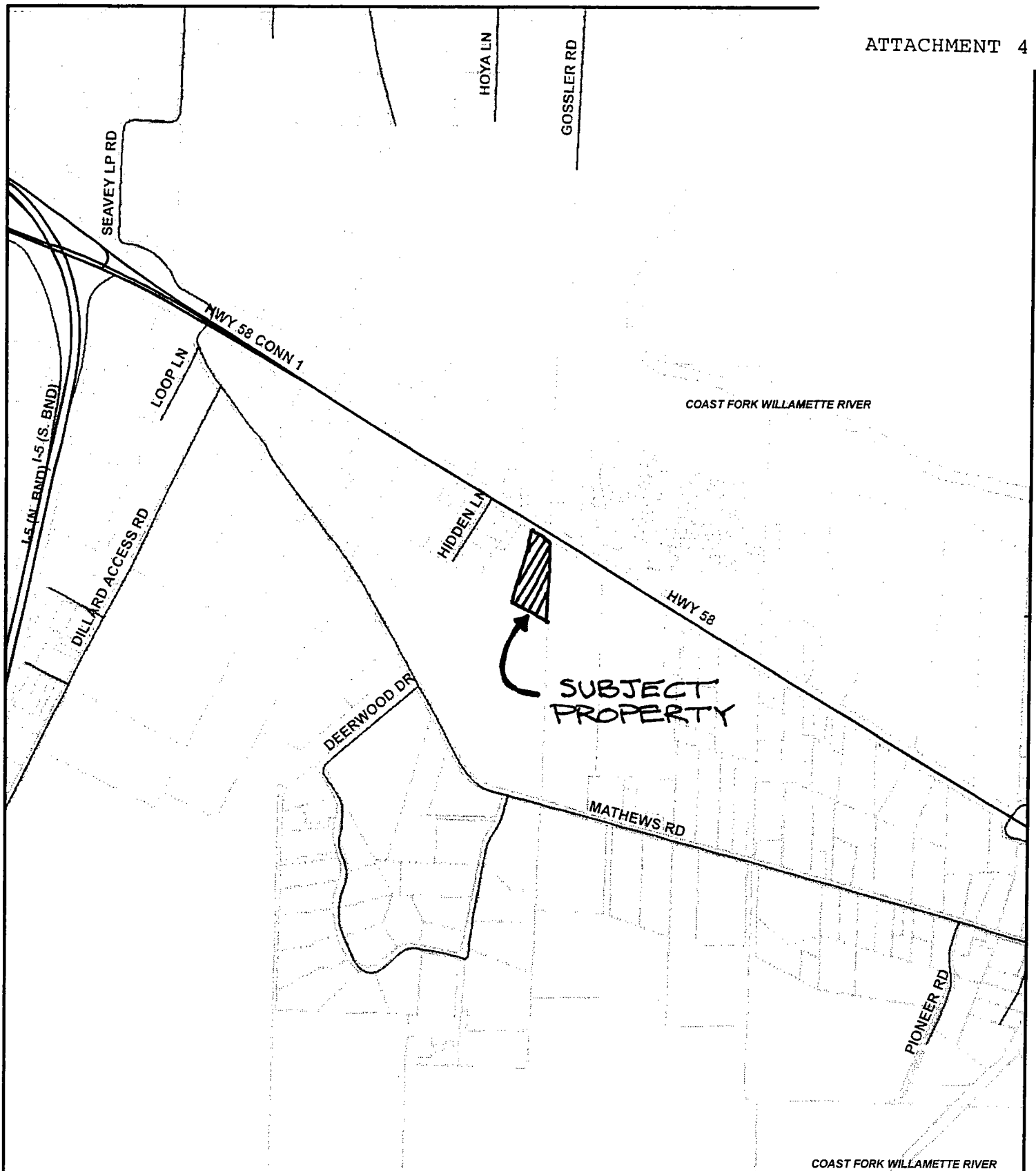
WE
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Eugene, OR 97440
Phone: 541-481-9779

NO.	DATE	REVISION	BY	CITY PROJECT NO.	DATE
1	NOVEMBER 2007		DAVE SWANSON	07-23	NOVEMBER 2007
2			DAVE SWANSON	07-23	

12/26/07
Hywy 58 Mini-Storage
PLANNING, GRADING AND STORM DRAINAGE
TENTATIVE DEVELOPMENT PLAN

SHEET
NUMBER
1
OF
2

EXC - REDUCED -



The information on this map was derived from digital databases on the Lane County regional geographic system. Care was taken in the creation of this map, but is provided "as is". Lane County cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for the specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

VICINITY
MAP



1 inch = 1,300 feet

