

W. 8. a

AGENDA COVER MEMO

DATE: March 1, 2010 (Date of Memo)
March 17, 2010 (Date of Meeting)

TO: Lane County Board of Commissioners

DEPT.: Public Works Department/Land Management

PRESENTED BY: Jerry Kendall, ^{JK} Associate Planner

AGENDA ITEM TITLE: Order No. _____ / In the Matter of Electing Whether or Not to Hear Arguments on an Appeal of a Hearings Official's Decision reversing the Planning Director's denial of a Group Care Home (file PA 09-5314/Teen Challenge)

I. MOTION

MOTIONS FOR THE BOARD OF COMMISSIONERS:

1. MOVE TO APPROVE THE ATTACHED ORDER

OR

2. MOVE TO NOT APPROVE THE ATTACHED ORDER AND ELECT TO HEAR THE APPEAL PURSUANT TO L.C. 14.300.

II. AGENDA ITEM SUMMARY

An appeal to the Board, contesting a Hearings Official approval of a group care home, has been received by the Director. The Appellant has filed the appeal per the option in LC 14.515(3)(f)(ii), requesting that the Board not conduct a hearing on the appeal and to deem the Hearings Official decision the final decision of the County. 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 Code.

III. BACKGROUND

A. History

1. Property involved in this action is identified as tax lot 224, map 18-04-21, located at 85989 and 85987 Bailey Hill Road, Eugene, and zoned RR-5 (Rural Residential -5)

within the jurisdiction of the Lane County Rural Comprehensive Plan and Lane Code Chapter 16.

2. In the form of application PA 09-5314, the property owner and applicant, Teen Challenge International Pacific NW Centers, in May 2009, requested the Planning Director's approval of a group care home, pursuant to Lane Code 16.290(4)(b) and LC 16.290(5).
3. On October 20, 2009, the Planning Director denied the application, finding that the applicant failed to carry the burden of proof in regards to describing the scope, frequency, nature, and duration of the proposal, and the activities associated with it.
4. A timely appeal of the Planning Director's decision was filed by the Applicant on November 2, 2009. The Director affirmed his decision, and a de-novo appeal hearing was scheduled.
5. The appeal hearing was held on December 4, 2009. The record was subsequently left open until December 24, 2009, for further submittals into the record.
6. On January 26, 2010, the Hearings Official issued his decision, reversing the Planning Director and approving the group care home.
7. A timely appeal of the Hearings Official's decision was filed on February 8, 2010.
8. On February 16, 2010, and after reviewing the appeal, the Hearings Official affirmed his decision of January 26.

B. Appeal Analysis

Lane Code Chapter 14 was recently modified by adoption of Ordinance 3-09, effective on December 4, 2009. Lane Code 14.515(3)(f) now provides for two appeal options. The Appellant can:

- (i) Request that the Board conduct a hearing on the appeal, or*
- (ii) Request that the Board not conduct a hearing on the appeal and deem the Hearings Official decision the final decision of the County. An appellant's election under this section shall constitute exhaustion of administrative remedies for purposes of further appeal of the County's final decision. The fee under this option shall not exceed the amount specified in ORS 215.416(11)(b).*

The opponents of the group care home chose the 2nd option (LC 14.515(3)(f)(ii)), and paid the associated fee of \$250. In short, they request that the Board not hear the appeal, enabling a subsequent appeal to the Land Use Board of Appeals.

Lane Code 14.515 requires that the Appellant provide an explanation, with detailed support, specifying assignments of error. In this regard, the Appellants claim that the Hearings Official (Approval Authority):

- Exceeded his jurisdiction (LC 14.515(3)(d)(i)).
- Failed to follow the procedure applicable to the matter (LC 14.515(3)(d)(ii)).
- Misinterpreted the Lane Code or Manual, State Law (statutory or case law) or other applicable criteria (LC 14.515(3)(d)(iv)).

The appeal contends that the Hearings Official misinterpreted provisions of the Federal Fair Housing Act (FHA), as well as cases which interpret it. The appellants do not necessarily accept the Hearings Officials conclusion that the clients of the Teen Challenge group care home are “handicapped” as that word appears in the definition of “group care home” found in LC 16.290(4)(b):

*“A ‘group care home’ is any home or institution maintained and operated for the care, boarding, housing or training of six or more physically, mentally or socially **handicapped** persons or delinquent or dependent persons by any person who is not the parent or guardian of and who is not related by blood, marriage or legal adoption to such persons. The occupancy of the dwelling for a group care home shall comply with the requirements of the building code as defined in ORS 455.010(8) and administered in ORS 455.150 and .153.”*

The Hearings Official reasoned that case law establishes that persons recovering from alcohol and drug abuse (i.e., the Teen Challenge clients) are “handicapped”, and therefore fit within the Lane Code definition of proper inhabitants of a group care home (see p.8 of the decision). The Hearings Official then reasons that a home housing such handicapped individuals is entitled to protection under the FHA. The Appellants maintain that the Hearings Official ignored their arguments to the contrary.

The Appellants also maintain that the Hearings Official placed undue reliance on the FHA, interpreting it to mean that denial of the proposal would not provide the “reasonable accommodation” required by the FHA.

The Appellants also maintain that the conditions of approval fail to address the approval standards. For example, the Appellants note that although the Hearings Official found that the Teen Challenge clients would not have their own vehicles on site, there is no condition corresponding to that prohibition (the conditions of approval are found on p.7 of the decision). Similarly, the Appellants claim that the conditions do not reflect the need to address septic upgrades as the facility increase to full projected capacity (20 adult clients, including up to six of their children).

In defense of the Hearings Officials decision, staff notes that the clients not having personal vehicles on site is part of the proposal, making the need for a corresponding condition superfluous. Staff also notes that condition #6 requires the use to “...comply

with Lane County Sanitarian requirements concerning the size of the subsurface sewage system *vis a vis* the number of residents”.

The appeal also states that the decision fails to address conflicting evidence. They cite:

1. That water quantity data in support of the proposal is 15 years old, and that the opponents expert testimony was ignored. Staff notes that water quantity is addressed on pages 14-15 of the decision, and that the Hearings Official does sift through the opposing expert testimony, though perhaps not to the extent desired by the opponents. He reaches a conclusion that more than adequate water supply is available beyond the calculated requirement of 1.7 gallons per minute.
2. That the decision fails to address past and future “group gatherings” on the subject property, nor is an attempt made to so limit such functions. The Hearings Officials position on this issue (p.10) is that “...alleged, actual or forecasted violations of Lane Code are not relevant as to whether the group care home, as proposed by the applicant, is consistent with the applicable approval standards”.
3. That the Hearings Official accepted, “without question” that the facility needs a minimum of 12 “students” in order to be financially viable. The Hearings Official discusses this issue on page 8 of the decision, stating that such is reflected in the file record. He goes on to say that “financial justification”, while not a sole factor, “...must be taken into account” in making a “reasonable accommodation” required by the FHA.
4. The Appeal claims that the easement serving the property is inadequate, and that the Hearings Official ignored a referral from a County Transportation Planner in that regard. The Hearings Official addresses this issue on page 11 of the decision. The Hearings Official found that the easement was a requirement of a 2001 Plat approval, and that such approval did not authorize use of the easement by four parcels, concluding that unauthorized use of an easement to be a civil issue.

The appeal also contends that the Hearings Official misinterpreted LC 16.290(5)(a), which states that the use:

(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 appeal claims that the Hearings Official basically used an equivalent sized single family residence as a measuring stick regarding this standard, instead of the *use* itself. Refer to page 10 of the decision. Staff notes that while the decision does not clearly state the reasoning behind how this “single family residence of the same size” standard was derived, the remainder of the Hearing Official’s analysis does breakdown the impacts of the use into its various components (parking/traffic, groundwater, septic

system, easement use, effects on neighboring livestock, neighborhood security, property values, and “special events”), and addresses the impacts of each.

Lastly, the appeal contends that because the Hearings Official did not properly address LC 16.290(5)(a), proper mitigating measures, such as conditions of approval, were not implemented, as required by LC 16.290(5)(b). Staff notes that conditions were imposed as listed on page 7 of the decision. They appear reasonable in light of the Hearing Officials analysis under LC 16.290(5)(a).

C. Policy Issues

Lane Code 14.600(3) dictates the procedure for this elect to hear meeting:

(3) Decision Criteria. A decision by the Board to hear the appeal on the record must conclude that a final decision by the Board can be made within the time constraints established by ORS 215.427(1) and that 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. The Board's decision to hear the appeal 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.*

Election to Hear Criteria

Regarding the “time constraints” mentioned in subsection (3) above, ORS 215.427(1) requires that a decision be reached within 150 days of the application being deemed complete, minus any timeline waivers granted by the Applicant.

In this regard, PA 09-5314 was received on May 19, 2009 and deemed complete on June 19, 2009. The only timeline waiver granted by the Applicant is found in file record exhibit #63, for a period of nine days. Thus, 271 days have passed from June 19, 2009 to March 17, 2010. Subtracting the nine day waiver, the application is at the 262 day mark as of March 17, 2010.

As per LC 14.600(3), the Board is advised that it cannot reach a final decision on PA 09-5314 within the time constraints of ORS 215.427(1). The Board will need to take this into consideration if it elects to hear the appeal.

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 current application is unique in that the Group Care Home is operated by an organization taking a faith-based approach to the care of its clients. This approach is coupled with and a set of site-specific land use characteristics of the properties involved. The issues raised in this appeal are related to operator specific and site specific qualities, and are not of countywide significance.

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

Proposals for Group Care Homes do not occur with frequency, and there is no need for policy guidance from the Board regarding elements of the Rural Comprehensive Plan pertinent to this application. At issue in this proposal is the relevance of the Federal Fair Housing Act, federal law to which county interpretation will be given no deference upon further appeal.

- 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.*

Neither the Planning Director nor the Hearings Official recommends Board review of this appeal.

D. Board Goals

The Board adopted the Strategic Plan in 2001.

An applicable goal from the plan includes:

- *Contribute to appropriate community development in the areas of transportation and telecommunications infrastructure, housing, growth management and land development.*

The Hearings Officials decision, in approving the group care home, aids community development by providing housing for handicapped parties. The decision contributes to growth management and land development in that such use is allowed in residential zones, provided the standards for approval are met. Such was found to be the case in the current decision.

E. Financial and/or Resource Considerations

The Appellant has chosen the 2nd appeal option as found in LC 14.515(3)(f)(ii), requesting that the Board not hear this appeal and to deem the Hearings Official decision

of January 26, 2010 the final decision of the County. Per Lane Manual, the appeal fee was \$250. If the Board elects to not hear the appeal, the Appellant can proceed directly to the Land Use Board of Appeals (LUBA).

If on the other hand, the Board deems that the appeal has merit per the decision criteria of LC 14.600(3), an on the record Board hearing will be scheduled per LC 14.400. Such action will require further planning staff time in preparing a more detailed analysis of the appeal, required coordination with Legal Counsel, Board administrative staff, and the Board itself. With no further appeal fees forthcoming, the Land Management Division will bear the cost of these additional county resources.

IV. TIMING/IMPLEMENTATION

If the Board adopts the order as presented, the decision by the Hearings Official becomes the final decision of the County upon signing of the order.

If the Board elects to hear the appeal, a date for an on-the-record hearing will need to be established following adoption of an Order electing to hear.

In either event, the involved parties will be notified of the Board outcome.

V. ACTION

A. Options:

Option 1. Move to approve the attached Order, electing not to hear the appeal, and deeming the Hearings Official decision of January 26, 2010 as the final decision of the County.

Option 2. Move to not approve the attached Order, and direct staff to return with an order electing to hear the appeal pursuant to LC 14.400.

B. Staff Recommendation:

Select option 1.

VI. ATTACHMENTS

1. Board Order electing to not hear the appeal, with Exhibits "A" (findings) and "B" (Hearings Official Decision, January 26, 2010 with Affirmation of decision, February 16, 2010)--21pp.

2. Opponents appeal of the Hearings Official decision, filed on February 8, 2010—6 pp.
3. Planning Director's (denial) decision of October 20, 2010—14 pp.
4. Applicant's appeal of the Planning Director's decision, filed on November 2, 2010—5 pp.

The entire file record for PA 09-5314 is available for review at the Land Management Division.

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

Order No. _____

) In the Matter of Electing Whether or Not to Hear
) Arguments on an Appeal of a Hearings Official's Decision
) Reversing the Planning Director's denial of a Group Care
) Home (file PA 09-5314/Teen Challenge)

WHEREAS, the Lane County Hearings Official has made a decision, reversing the Planning Director and approving a Special Use Permit for a Group Care Home, application PA 09-5314 ; 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 decision on application PA 10-5314; 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, Lane Code 14.515(3)(f)(ii) provides the option that the appellant can request the Board not conduct a hearing on the appeal; and

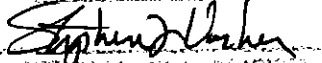
WHEREAS, the Board of County Commissioners has reviewed this matter at a public meeting of the Board; NOW

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

1. That the appeal does not comply with the criteria of Lane Code Chapter 14.600(3) and arguments on the appeal should therefore not be considered. Findings in support of this decision are attached as Exhibit "A"
2. That the Lane County Hearings Official decision dated January 26, 2010 interpreting applicable provisions of LC.16.290(4)(b), LC 16.290(5), LC 16.290(7), and applicable state and federal laws, attached as Exhibit "B", is affirmed and adopted by the Board of County Commissioners as the County's final decision.

DATED this _____ day of March, 2010

APPROVED AS TO FORM

3-8-2010

OFFICE OF LEGAL COUNSEL

Chairperson, Lane County Board of Commissioners

FINDINGS IN SUPPORT OF THE ORDER

1. Property involved in this action is identified as tax lot 224, map 18-04-21, located at 85989 and 85987 Bailey Hill Road, Eugene, and zoned RR-5 (Rural Residential -5) within the jurisdiction of the Lane County Rural Comprehensive Plan and Lane Code Chapter 16.
2. In the form of application PA 09-5314, the property owner and applicant, Teen Challenge International Pacific NW Centers, in May 2009, requested the Planning Director's approval of a group care home, pursuant to Lane Code 16.290(4)(b) and LC 16.290(5).
3. On October 20, 2009, the Planning Director denied the application, finding that the applicant failed to carry the burden of proof in regards to describing the scope, frequency, nature, and duration of the proposal, and the activities associated with it.
4. A timely appeal of the Planning Director's decision was filed by the Applicant on November 2, 2009. The Director affirmed his decision, and a de-novo appeal hearing was scheduled.
5. The appeal hearing was held on December 4, 2009. The record was subsequently left open until December 24, 2009, for further submittals into the record.
6. On January 26, 2010, the Hearings Official issued his decision, reversing the Planning Director and approving the group care home.
7. A timely appeal of the Hearings Official's decision was filed on February 8, 2010.
8. On February 16, 2010, and after reviewing the appeal, the Hearings Official affirmed his decision of January 26.
9. The appeal states that the Approval Authority exceeded his jurisdiction, failed to follow applicable procedure and rendered a decision which misinterpreted Lane Code, state, and federal laws.
10. 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.*
11. The Board of Commissioners finds that the appeal involves a set of circumstances and a fact pattern particular to the property. While the appeal raises issues concerning interpretation of a Rural Comprehensive Plan policy (Policy 8 of Goal 3 policies), the

issues raised in the appeal are adequately dealt with in the Hearings Official's decision of May 2, which is affirmed by the Hearings Official letter of May 14. While the policy interpretation may have some County significance in that it could apply to other similar rezonings in the future, the Board finds that the Hearings Official's treatment of it is appropriate and thus the Board finds that further evaluation of it for this reason is not necessary. The Board further finds no issues of Countywide significance raised in those elements of the appeal which address procedural matters including request for a subsequent hearing or burden of proof.

12. The Board of Commissioners finds that the current application is unique in that the Group Care Home is operated by an organization taking a faith-based approach to the care of its clients. This approach is coupled with a set of site-specific land use characteristics of the properties involved. The issues raised in this appeal are related to operator specific and site specific qualities, and are not of countywide significance.
13. The Board of Commissioners finds that proposals for Group Care Homes do not occur with frequency, and there is no need for policy guidance regarding elements of the Rural Comprehensive Plan pertinent to this application. At issue in this proposal is the relevance of the Federal Fair Housing Act, federal law to which county interpretation will be given no deference upon further appeal.
14. The Board of Commissioners finds that tax lot 224 is a 5.4-acre developed residential parcel which is not a unique environmental resource.
15. Neither the Planning Director nor the Hearings Official recommends review of the appeal.
16. 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.
17. The Board has reviewed this matter at its meeting of March 17, 2010, and finds that the appeal does not comply with the criteria of Lane Code Chapter 16.600(3), and elects to not hold an on the record hearing.
18. The Board expressly adopts the Hearings Officials decision of January 26, 2010, as the County's final decision in this matter.

**LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR DENIAL OF A REQUEST FOR A SPECIAL
USE PERMIT TO ALLOW A GROUP CARE HOME WITHIN A RURAL
RESIDENTIAL DISTRICT**

Application Summary

Teen Challenge International Pacific Northwest Centers (Teen Challenge), 85989 & 85987 Bailey Hill Road, Eugene, OR 97405. The applicant requested a special use permit to allow a group care home for "disabled" women and their children within the Rural Residential Zone (RR-5/RCP). The application was submitted March 19, 2009, deemed complete on April 19, 2009, and denied by the Lane County Planning Director on October 19, 2009. A timely appeal was filed on by the applicant.

Parties of Record

See Attachment "A"

Application History

Hearing Date: December 3, 2009
(Record Held Open Until December 24, 2009)

Decision Date: January 26, 2010

Appeal Deadline

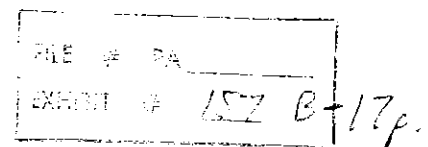
An appeal must be filed within 10 days of the issuance of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

Lane Code 16.290(4)(b)
Lane Code 16.290(5)
Lane Code 16.290(7)

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located at 85989 & 85987 Bailey Hill Road, southwest of Eugene. The subject property is 5.38 acres in size and can be identified as tax lot 224, assessor's map 18-04-21.



The subject property is developed with one dwelling and structures that were used to operate a former Day Care nursery on the property. The Day Care Nursery was given approval by the Lane County Hearings Official to expand its' operation to serve up to 24 children in 1985 (PA 859-85). Approval granted by the Hearings Official in 1994 to add a private school to the facility with a maximum enrollment of 49 children (PA 2969-94) was not implemented. The property was 8 acres in size at the time of issuance of those decisions.

2. The applicant requests a special use permit to allow a group care home called Hanna House. The home is intended to serve as a recovery facility/environment for recovering female drug and alcohol abusers. A minimum of 12 individuals must be housed in a facility to economically support the two full-time, on-site support staff and other support staff. The women are allowed to bring their children in order to retain family bonds. The requested permit would allow up to 20 individuals, including on-site staff, on a full-time basis. The women work at a thrift store operated by the applicant in order to raise funds for their "room & board" and to gain workforce experience. None of the women staying at Hanna House are allowed to have their own vehicles on the site.

The proposed group care home will employ up to seven full time workers, have a daily delivery of supplies and will have up to ten guest vehicles a day visiting on weekends. The "students" will not be allowed to have vehicles. The revised site plan delineates six 15' x 10' parking spaces along the front of the house, eight 10' x 20' guest parking spaces aligned to be perpendicular to the existing gravel driveway going to the garage, and an overflow parking area for fifteen 10' x 20' parking spaces.

3. The subject property is occupied with an existing dwelling, barn, pavilion and a garage. There are five large buildings on the subject property that are shown on the site plan. The Applicant proposes to use these buildings as follows:

- Existing House—This structure will be enlarged to provide additional bedrooms as necessary and/or convenient. All sleeping arrangements on the subject property will be limited to the existing house.
- Activity Building—This structure currently has 2,600 square feet with two large common rooms, two ADA-compliant bathrooms, a kitchen, and an office and another miscellaneous room. Changes to this part of the structure, in addition to those mentioned above, would include finishing the kitchen by installing cabinets and countertops with sink (plumbing already exists).
- Existing Blue Barn—The floor of this building will be used as day-use recreational room downstairs and the upstairs will be used for storage.
- Garage— This building will be used as a multi-purpose activity room. Significant changes to garage would include:
 - Δ Removal of overhead garage doors that would be replaced with matching exterior and interior siding.
 - Δ Insulation and sheetrock finish of the entire interior.
 - Δ Industrial vinyl flooring installed, and
 - Δ Baseboard heating would be installed.

Δ There are already two existing 32" entry/exit doors installed and six 36" x 48" windows for ingress/egress. No plumbing is necessary for the use as a multi-purpose room.

- Pavilion— This structure will be used as-is for a picnic pavilion/gazebo.

The dwelling will be altered to accommodate a group care home for up to 20 individuals, including disabled women and their dependent children. At maximum client load, 3 staff members will be on the property overnight, with at least one of them awake and on duty during the night. Residents receiving treatment at the proposed facility will not have vehicles and will therefore not generate traffic. Employee parking will be provided on site.

Through the proposed use, the applicant intends to provide spiritual counseling in regard to drug & alcohol addiction, a home and educational training. The applicant employees the women on-site and the children attend neighborhood schools. Care lasts for a period of between 12 and 15 months.

4. The subject property is bordered on the west by Bailey Hill Road. Property across the road includes Twin Oaks Elementary School that has 240 students and is a component of the 4J School District. The subject property is bordered on the south by Tax lot 228, Assessor's Map 18-04-2. This parcel is approximately 5 acres in size, is zoned Rural Residential, and is vacant. It is accessed by a 50' wide easement across the subject property from Bailey Hill Road.

The subject property is bordered on the north by 15 acres in common ownership identified as Tax Lots 200, 226 and 227, Assessor's Map 18-04-21. The properties are developed with one residence at 85995 Bailey Hill Road and are zoned Rural Residential (RR-5).

The subject property is bordered on the east by Tax Lot 229, Assessor's Map 18-04-21. This parcel is approximately 5 acres in size, is zoned Rural Residential, and is developed with a residence at 85985 Bailey Hill Road. It is accessed by the same 50' wide easement across the subject property used by Tax Lot 228.

5. The subject property is not identified within the Rural Comprehensive Plan as being occupied by a Class I Stream. The Flood Insurance Rate Map 41039C1625F does not identify flood hazard areas on the subject property. The National Wetlands Inventory Map does not identify jurisdictional wetlands on the subject property. The property is comprised of soil map units #52D Hazelair (85%), #135D Willakenzie (11%), #125C Steiwer (2%), and #28C Chehulpum (1%).
6. The subject property is located on Bailey Hill Road, a County Road classified as a Rural Major Collector and has an average daily traffic of 3,600 vehicles. It is a two lane, 29-foot wide road with a 100-foot wide platted right-of-way (that being 40' west of centerline and 60' east of centerline) at this location. Per LC 15.070(1)(d), when a road has an existing right-of-way width greater than the minimum right-of-way width

specified in LC 15.070(1)(c), the building setback line shall be measured from the existing right-of-way width rather than the minimum right-of-way width. Bailey Hill Road has an additional 20' setback per LC 15.083 which should be considered when planning for structures in addition to the setback required by the applicable zoning district. Additional setbacks are described in LC 15.010(4). For informational purposes, LC 15.070(1)(i) states "fences, walls or hedges and guard railings, or other similar landscaping or architectural devices, may be established within the setback area provided they do not exceed three and one-half feet in height and further provided that they do comply with Visual Clear Zone requirements specified in LC 15.095(3)."

The subject property is burdened by a 50-foot wide easement that was created as a part of Land Partition Plat No. 2001-P1519. This easement, clearly shown on the plat map, underlies the driveway that serves the subject property (Blue Barn Tract), and serves and burdens Parcel 1 (Tax Lot 228), and serves and terminates at Parcel 2 (Tax Lot 229). Parcel 3 of that partition (Tax Lot 230) is served by a roadway panhandle from the south that connects to the Loraine Highway and is not served by the easement.

7. The occupancy of this proposed use is defined as either an I-1 or a Group SR-1 based on definitions in the Oregon Fire Code and Oregon Structural Specialty Code. The definition is based on the number of occupants (more than 16 persons) and their ability to escape the building safely based on their mobility (i.e., children under the age of 6). Therefore, all current applicable building and fire codes shall apply, as well as any Department of Human Services rules.
8. The existing sewage disposal system consists of two septic tanks of 1000 gallons and 1500 gallons, and 1485 feet of drainline installed at the time of construction of an addition to the daycare building in 1994 (BP 94-2106). Using a DEQ table found in OAR 340-71-220, which assigns a design flow of 150 gpd to each bed space for "boarding houses," the 1485 lineal feet of drainfield will support 10 beds. Based upon the size of the subject property and its soil types, the County Sanitarian believes it reasonable to conclude that an upgrade to accommodate up to 23 beds is possible. There were reports of a potential septic failure earlier this year but this issue was solved through the pumping of the septic tank.
9. A water system is classified as a State-regulated water system when the system has 4+ connections or serves 10 to 20 people.¹ If the water system serves 25+ users or has 15+ connections and 25 of the daily users are the same users for more than 6+ months out of the year (year-round residents) then it is a community water system. A State-regulated water system vs. a community water system differ in the number of water tests that are required.
10. Fire protection is provided to the property by the Lane County Fire District #1. Police services are provided by State Police and the Lane County Sheriff.

¹OAR 333-061-0020(170)

11. The subject property is located in an area that has been designated as a water-quantity limited area in Lane Manual 13.010(2), the Spencer Creek Watershed.² Documentation on available water supply and the ability to meet demand was supplied by the Applicant via the firm of EGR & Associates.³ These reports conclude that the facility would require an average flow of 1.7 gallons per minute (gpm), and that a well on the subject property should have no significant adverse effect on water quantity on nearby properties as the wells in the area average over 30 gpm. A 2004 pump test authorized by the previous owner of the subject property demonstrated a 16-gpm capacity. The quantity of water needed for the proposal has not been challenged by opponents although the effects of the subject property's well has been challenged by the firm of Environmental Management Services.

Well logs taken from wells located within a square mile that includes the subject property and the Twin Oaks Elementary School (43 wells) average 35.6 gpm. Since 2001, seven new wells have been drilled in this section yielding, on the average, 55.8 gpm.

Dormitory students have been shown to use, on the average, about 50 gallons of water per day. The Oregon Department of Environmental Quality use a more conservative standard for boarding schools and requires sewage disposal system designs to handle 100 gallons per student per day. Applying this conservative estimate to the proposed use, which will have a maximum of 24 individuals per day (students, children, staff), maximum water use will be around 2,400 gallons per day. Actual water use will be less as most staff will not be resident and will go elsewhere to take showers and wash their clothes. The 2,400 gallons of water per day can be supplied by a well that produces 1.7 gpm. A 1994 pump test documented a sustained flow of 5.5 to 6 gpm.

The well serving the subject property was tested for water quality in January of 2004. The results of this test were that the well water met the state standards for arsenic, nitrates, total Coliform and Fecal Coliform.

12. Recent special events or uses occurring on the subject property and documented through a Land Use Compatibility Statement (LUCS) include the following:
- A gathering that took place on the subject property in June of 2008. A sign in one of the photos in the record describes the event as "United We Stand/FMCA Chapter/Oregon/Coaches for Christ". The photos show a minimum of four large RV's.
 - Building repair/construction activity occurring in April, 2009 that consisted of 25 to 30 young men.

² It should be noted that the Lane Manual specifies that parcelization patterns that can reasonably be expected to locally exceed the carrying capacity of the groundwater system within Section 24, Township 18, Range 3 are limited to densities of R-1, R-2, and R-3. The subject property and immediately adjacent parcels are zoned RR-5.

³ This firm has done numerous tests in this area, several of which concerned the subject property.

- A graduation and/or wedding ceremony that occurred on Sunday, August 30, 2009. Photos show 9 children, with a minimum of 17 vehicles parked on the property, some of which are alleged to have parked on top of the septic drainfield.
 - A worship event held on October 15, 2009 at which 40+ people gathered from 8:30 am–10 am. They arrived in 25-30 vehicles, for an event described as a “One Hope” gathering.
 - Outdoor prayer services attended by 100 persons.
13. As noted above, the proposed use will have a maximum of 7 full-time employees. There will be daily deliveries and visitors on the weekend. The average trip rate on a weekday for a 20-bed assisted living facility is 2.66 trips per bed or 53 daily trips. The PM peak hour trip rate is 0.35 trips per bed or 7 peak hour trips. The highest peak hour trip rate occurs on a Sunday and is 0.38 trips per bed or 8 peak hour trips. The addition of the trips from the two parcels that legally utilize the driveway/easement that begins on the subject property, there would be significantly fewer than the 50 peak hour trips required for a traffic impact study by Lane Code 15.697.

The revised site plan delineates six 15' x 10' parking spaces along the front of the house, eight 10' x 20' guest parking spaces aligned to be perpendicular to the existing gravel driveway going to the garage and an overflow parking area for fifteen 10' x 20' parking spaces. At least 23 of the 29 parking spaces are large to accommodate a seven-to-ten passenger vans.

A worse-case traffic scenario is where all 29 vehicles either enter or exit the site during the peak hour of traffic on Bailey Hill Road and during the same 15-minute period. Applying a reasonable assumption that 90 percent of the vehicles have origins or destinations to the north (towards Eugene), the level service (LOS) for Bailey Hill Road is “A” in both directions and “B” for both the site’s driveway and Schnorenberg Lane. The maximum volume to capacity ratio (v/c) for Bailey Hill Road at this location is 0.75. The highest v/c at the site is 0.15 for vehicles exiting the driveway. All other v/c’s were 0.02 or less.

American Association of State Highway and Transportation Officials (ASHTO) standards for intersection sight distance for a 55 mph road is 550 feet of sight distance for right turns and 610 feet for left turns. Sight distance at the driveway intersection of Bailey Hill Road is 650 feet and 675 feet, respectively, for right and left turns.

Decision

THE PLANNING DIRECTOR’S DENIAL OF THE TEEN CHALLENGE REQUEST (PA 09-5314) FOR A SPECIAL USE PERMIT TO OPERATE A GROUP CARE FACILITY ON PROPERTY ZONED RURAL RESIDENTIAL IS REVERSED. THE SPECIAL USE PERMIT IS CONDITIONED UPON THE FOLLOWING:

1. The number of residents shall be limited by the building code. An increase in the number of residents beyond that currently allowed by the building code shall not be permitted until building and occupancy permits are issued by Lane County.
2. A rail or game fence shall be installed to block possible access to the Phillips private driveway.
3. Arborvitae trees shall be planted and maintained along the east property line that abuts the Freeman's property.
4. A chain-link fenced area shall be constructed around the area where garbage and recycle containers will be kept.
5. Outdoor lighting shall be oriented towards the ground so as to minimize ambient light that escapes onto adjacent properties.
6. The proposed use shall comply with Lane County Sanitarian requirements concerning the size of the subsurface sewerage system *vis a vis* the number of residents. In this regard, any building permit application by the applicant for an increase in the number of bedrooms shall be reviewed and approved by a Lane County sanitarian.
7. Immediately upon awareness that a "student" has walked away from Hanna House without permission, Hanna House staff shall notify adjacent property owners.
8. "Students" who have been determined to have relapsed into their addiction shall be removed from Hanna House and the subject property at least until they have undergone detoxification.
9. The applicant must comply with Oregon Department of Human Resources, Public Health Division regulations for water quality monitoring for a State-regulated water system, if applicable

Justification for Decision (Conclusion)

The applicant has requested special use permit approval for a group care home. This use is discretionarily allowed in the residential zoning district under Lane Code 16.290(4)(b):

"Not more than one group care home on a lot or parcel and in a dwelling, manufactured dwelling or duplex allowed by LC 16.290(2)(a) through (c) above. A "group care home" is any home or institution maintained and operated for the care, boarding, housing or training of six or more physically, mentally or socially handicapped persons or delinquent or dependent persons by any person who is not the parent or guardian of and who is not related by blood, marriage or legal adoption to such persons. The occupancy of the dwelling for a group care home shall comply with the requirements of the building code as defined in ORS 455.010(8) and administered in ORS 455.150 and .153."

The applicant has argued that the federal Fair Housing Act, as amended, requires that the proposed use be allowed outright. In the alternative, it argues that the application is consistent with the approval standards of Lane Code 16.290(5). Opponents have questioned whether the proposed use is protected by the Fair Housing Act or that it qualifies as a "group care home" as it is defined by LC 16.290(4)(b), arguing that the individuals with educational deficits are not physically, mentally or socially handicapped.

The Fair Housing Act, as amended in 1988, makes it illegal to discriminate in the sale or rental of a dwelling because of a handicap.⁴

The statute defines the term “handicapped” to include a physical or mental impairment that substantially limits one or more of a person’s major life activities.⁵ It is established by case law that the term “handicapped” includes the homeless,⁶ as well as recovering alcohol and drug abusers.⁷ For purposes of this decision, it is assumed that the proposed use qualifies as a residential use protected by the FHA.

A local government “discriminates if it refuses to make reasonable accommodations in its rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.”⁸ I do not believe that the Lane Code facially discriminates against persons protected by the FHA. Group care homes, which encompass care facilities such as proposed by the applicant, are allowed in the same residential district that allows single-family residences. The special use permit process is the county’s approach for making a reasonable accommodation to its regulations and no discrimination will exist unless the application is denied or conditioned based upon factors that treat the applicant in a manner different from how an application for a single-family dwelling would be treated. Said another way, absent a showing that the application for a special use permit would be futile, the county must be allowed an opportunity to make a reasonable accommodation to its rules.⁹

The opponents have questioned that the requested accommodation is an accommodation that is required by the women being housed at the Hanna House recovery center. To the contrary, the record indicates that the recovery houses need at least 12 “students” in order to economically support a sufficient number of staff, two of which (at a minimum) will live on the site. As part of the recovery program, the women are allowed to bring their children in order to not separate families and to provide a better environment for recovery. Allowing for a maximum of six children brings the total to 20 individuals who may reside at the facility. This is the number of individuals requested by the applicant for the special use permit for the proposed group home. The opponents argue a financial justification cannot provide the basis for a reasonable accommodation. While I would agree that a financial justification cannot be the sole basis of requiring a reasonable accommodation I do believe that it is a factor that must be taken into account.¹⁰

The opponents question whether the applicant has demonstrated that the “students” housed at Hanna House are truly recovering addicts rather than individuals who have had problems with school or from experimental use of drugs or alcohol. As admitted by the applicant, it does not provide medical treatment or rehabilitation and is not certified or licensed by the State to provide that sort of service. An examination of the applicant’s Eugene Student Manual (Exhibit 136)

⁴ 42 U.S.C. §§ 3604(f)(1)

⁵ 42 U.S.C. § 3602(h)

⁶ *Turning Point, Inc. v. City of Caldwell*, 74 F.3d 941 (1996)

⁷ *City of Edmonds v. Oxford House, Inc. Et Al.*, 514 U.S. 725 (1995); *Tsombanidis, and Oxford House, Inc. v. City of West Haven, Connecticut*, 180 F.Supp. 262 (2001)

⁸ 42 U.S.C. §§ 3604(f)(3)(B)

⁹ *Oxford House Inc. v. City of St. Louis*, 77 F.3d 249 (8th Cir. 1996), *cert. denied*, 117 S.Ct. 65 (1996)

¹⁰ *Turning Point, Inc. v. City of Caldwell*, 74 F3d 941 (1996)

makes it clear, however, that the Hanna House program is aimed at helping recovering addicts re-enter society without their previous addiction. It talks about setting people free "from the bondage of addictions" and states that part of its goal is to get students off alcohol and drugs. To this end, the applicant provides support services that include housing that is isolated from an environment that caused the addiction, education, entry into the workforce, and other benefits that are intended to prepare the ex-addict to re-enter normal society. The assistance provided by the applicant to recovering addicts is also documented by testimonials from numerous individuals.

The program is intended to correct "destructive attitudes and behavior patterns" that they have not been able to correct on their own. The beginning phases of the program are quite austere and deprive the student of most personal freedoms that a normal individual takes for granted. For instance, the receipt of mail, telephone calls and visitors are prohibited the first two weeks of the program and are severely restricted thereafter. Travel is also restricted to that permitted by the staff. In addition, the manual contains numerous testimonials, albeit unsworn, that speak to addiction recovery accomplished through the program. It seems improbable that someone would enter this 12-month program without the intent or at least the hope of recovering from an addiction.

The opponent's argument that the application does not qualify as a "group care home" under the Lane Code is self-defeating. If this were the case then the use would have to be approved outright because it clearly is protected by the FHA. However, I believe that individuals that are recovering from alcohol and drug abuse are clearly "socially handicapped," within the meaning of Lane Code's definition of "group care home," and benefit from an environment that provides shelter, counseling and a controlled introduction into the work force.

The FHA does not cover individuals whose tenancy constitutes a direct threat to the health of safety of others or whose tenancy would result in substantial physical damage to the property of others.¹¹ Various opponents have made allegations regarding damage to their property (easement, livestock, etc.) from the use of the subject property by individuals associated with the group care home and about potential security threats. I believe that these issues can be examined under the analysis required by Lane Code 16.290(5)(a) but, in summary, find that none of these allegations rise to the level where the proposed use would be excluded from the protection of the FHA.

The opponents have argued that the application for a special use permit for a group care home is incomplete, in the sense that insufficient information is present to address its impacts. I disagree. The applicant has defined the maximum number of full-time residents and has described the various activities that will occur on the subject property. Plans for the expansion of the group care home to accommodate the increase in "students" and children must meet setback requirements as well as building code and sanitation regulations. If the maximum number of residents is known then water, sewerage, bedroom and other needs can be determined. The only unknown is the shape of the structure as it is expanded to add additional bedrooms. I fail to see how the neighbors are adversely affected by the shape of the group care home.

¹¹ 42 U.S.C. § 3604(f)(9)

Lane Code 16.290(5)

Lane Code 16.290(5) requires that uses and development in Lane Code 16.290(4)(a) through (s), except for telecommunications facilities, comply with the following criteria:

- (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 “significance” of an impact must be determined in relation to the impacts associated with those use permitted outright in the residential zone¹² and, in this case, in the context of the FHA. The test is that the proposed use may not have an impact significantly greater than that which would be generated by uses permitted outright. In the present case, this test may be read to mean that the proposed use may not have an impact significantly greater and different than that of a single-family residence of the same size.

Opponents have alleged the following adverse impacts from the proposed use: past violations of the Lane Code, traffic and parking concerns, harm to the aquifer and surrounding wells, septic tank capacity, overuse of an access easement, disturbance of alpaca sheep from noise and lighting, neighborhood security, property value reduction and impacts from “special events.”

Past violations of the Lane Code—The opponents have pointed to many alleged past violations of the Lane Code, including illegal “special events,” individuals living on the subject property in excess of that permitted without a special use permit, and various building code and sanitation code violations. The record reflects that many of these alleged violations have been reported to Lane County and have been investigated by the County’s enforcement and building officials. No citations have been issued although it is standard practice to suspend enforcement proceedings when a land use permit that may correct code violations is pending. Regardless, alleged, actual or forecasted violations of the Lane Code are not relevant as to whether the group care home, as proposed by the applicant, is consistent with the applicable approval standards.

Parking/traffic concerns— The proposed group care home will employ up to seven full time workers, have a daily delivery of supplies and will have up to ten guest vehicles a day visiting on weekends. The “students” will not be allowed to have vehicles.

The revised site plan delineates six 15' x 10' parking spaces along the front of the house, eight 10' x 20' guest parking spaces aligned to be perpendicular to the existing gravel driveway going to the garage and an overflow parking area for fifteen 10' x 20' parking spaces. The proposed parking areas, collectively, are sufficient to address the anticipated daily and weekend needs of the proposed use.

In terms of traffic, Bailey Hill Road is classified by the Lane County Rural

¹² *Orr v. City of Eugene*, 6 Or LUBA 206 (1982)

Transportation Plan as a Rural Major Collector. It has an average daily traffic of 3,600 vehicles. At capacity, the group care home may generate between ten and sixteen vehicle trips that include five off-site employees, van trips to the applicant's thrift store, delivery of some children to the Twin Oaks Elementary School, and occasional commercial deliveries. On weekends, the number of vehicle trips may be as high as 29 if the seven full time employees work on weekends and ten guests visit the facility. At its highest, the expected normal traffic generation from the proposed use will be less than one-one hundredth of a percent of the average daily traffic on Bailey Hill Road. Further, even in a worst-case scenario where 29 vehicles would be entering or exiting within a 15-minute period, the peak hour LOS for Bailey Hill Road at the subject property and Schnorenberg Lane will remain either "A" or "B," very good levels.

The subject property was previously approved for the use of a day care nursery for up to 24 children in 1985 and subsequently for a private school of up to 49 children in 1994. While the latter use was not implemented, the former had the capacity to generate up to 48 vehicle trips during weekdays.

The driveway entrance to the subject property lies within a posted "Slow-School Zone" area where the vehicular speed limit is 20 miles per hour when children are present. The speed zone begins 100 feet north of the driveway. The driveway is wide enough to accommodate the passing of vehicles and it is unlikely that traffic will be forced to back up onto the road due to congestion. Further, the sight distance in both directions at the driveway's intersection with Bailey Hill Road more than meets AASHTO standards.

In conclusion, parking appears to be adequate the normal and anticipated needs of the proposed use and traffic generated by this use will not adversely affect the capacity or safety of Bailey Hill Road or Schnorenberg Lane.

Impact on the groundwater supply— See the discussion under Lane Code 16.290(5)(c) and (d), below.

Septic tank system— See the discussion under Lane Code 16.290(5)(c), below.

Access easement overuse—The access easement that burdens the subject property and that serves tax lots 228 and 229, has a width of 50 feet and an improved surface of 12 feet. The opponents have argued that the easement serves four lots and therefore Lane Code 15.706(4) [Table 11] requires the improved surface width to be 18 feet. An examination of Partition Plat No. 2001-P1519 clearly indicates that the easement serves only the subject property and tax lots 228 and 229. Additional users of the easement/driveway are not authorized by the plat.

The owners of adjacent properties that share an easement over the subject property have questioned whether the use of the easement is excessive and whether that access serves too many properties. Disputes regarding violation of easement restrictions or maintenance are generally of private concern and should be resolved in Circuit Court. There is no evidence that this is not the case at present.

Adverse impacts to livestock—The Freemans, adjacent property owners, own Alpacas. They have alleged that trash, noise and lighting from the subject property have adversely affected these animals, primarily in regard to the quantity of stillbirths. The applicant attributes the debris to material that escapes the rear-loading garbage disposal truck that picks up the facility's garbage. The noise has primarily been attributed to the children playing in the back yard and the adverse lighting from security lights that are left on at night.

The Freemans have spoken very passionately about their opposition to the proposed group care home. The magnitude with which they voice some of these concerns, however, appears to be out of proportion to the actual evidence in the record. Without expert testimony from a neutral individual or individuals who are familiar with Alpaca raising, I cannot conclude that the impacts complained of have or are likely to have resulted in increasing the number of still births in the Freemans' Alpaca herd.

Neighborhood security/safety—Opponents have questioned the impact of the proposed use on the safety and security of the proposed use. Most of these concerns are centered around one isolated instance of a "student" leaving Hannah House and requesting assistance from a neighbor and of several occurrences where there was what appeared to be inadvertent trespass onto adjacent properties by guests on the subject property. The concerns of the opponents regarding security are not invalid and go to the heart of legitimate coverage by the FHA. As conditions of approval, adjacent neighbors must be notified of any "student" who walks away from the program and "students" who relapse into either drug or alcohol use shall be excluded from Hanna House and the subject property until they have been detoxified.

The incidents that have been reported are of a nature and frequency that might be normally associated with standard residential use and I do believe that they rise to the level of either adversity or significance as to suggest that the proposed use is not consistent with Lane Code 16.290(5)(a). Nor do I believe that the behavior described would constitute "a direct threat to the health of safety of others or whose tenancy would result in substantial physical damage to the property of others" so as to disqualify either the proposed use or the individuals involved with exclusion from the protection of the FHA.

Property value diminution—The record contains a letter from two real estate brokers who speculate that a group care home would significantly adversely impact the value and marketability of surrounding properties. In virtually identical written testimony, they point to the inability of the Freemans, neighbors adjacent and to the south of the subject property, to sell their home. The record also contains a portion of a November 2000 article from *Land Economics* titled "The Effect of Group Homes on Neighborhood Property Values" that concludes that the mean sales price for homes in neighborhoods with group care homes was \$4,000+ less than for homes in neighborhoods without group care homes. This analysis was of property values in seven Du Page, Illinois neighborhoods and unfortunately, the various statistical tables accompanying this article

were not placed into the record and the reader is uncertain as to what kind of group care homes were involved. Conceivably, a group care home for the mentally ill, sex offenders, or recovering male drug and alcohol addicts, for instance, may individually have differing impacts on property values than a group care home for Alzheimer patients or recovering female drug and alcohol addicts.

I believe that a case can be made that property values are adversely affected by the presence of a nearby group care facility but don't believe that there is sufficient information in the present record to determine whether the adverse impacts from the proposed group care home are significant. Also, I do not believe that the impacts from the proposed use, if operated as warranted by the applicant, rise beyond that of a normal residential use. It is apparent that property value diminution is largely based upon fear and speculation of worst-case scenarios that, in this case, are not supported by the facts in the record. This isn't to say that property values are not influenced by subjective reasoning but rather that this type of reasoning is not sufficient to overcome the protections of the FHA. If diminution of property values were a sufficient basis upon which to deny a group care home or similar facility protected by the FHA, there would be very few such facilities that could be sited in residential districts and I believe that this was this situation that prompted Congress to enact the FHA and its subsequent amendments.

Special events—There is some confusion regarding what the “special events” are regarding the applicants’ proposal. Those in opposition have suggested that “special events” were activities such as the “United We Stand/FMCA” and the “One Hope” gathering. The applicant’s representative, however, has clarified that this term was intended to refer to birthday parties, student graduations, open houses, small luncheons and other similar activities that are associated with the program. The applicant’s definition is not out of character of that which might occur with a large residential family. It is unclear from the record whether the activities identified by the opposition would need land use approval if associated with a residential use. If not, then they would not require land use approval if associated with the proposed group care home. If so, then they would.

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

Nine conditions have been attached to this approval. With the exception of Conditions #6–#9, these conditions have been suggested by the applicant. Condition #6 represents standard practice in that a representative of the Lane County Sanitarian review building permit applications that would result in additional bedrooms. Conditions #7 and #8 are intended to ensure that the “students” housed by Hanna House qualify and remain qualified under the provisions of the FHA. Condition #9 is more appropriately labeled as an “advisement” and is intended to alert the applicant that State-imposed water quality monitoring may be mandatory when Hanna House is occupied by ten or more individuals

- (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**

Sewage system—The existing sewage disposal system consists of two septic tanks of 1000 gallons and 1500 gallons, and 1485 feet of drain line installed at the time of construction of an addition to the daycare building in 1994 (BP 94-2106). The 1485 lineal feet of drainfield will support 10 beds and based upon the size of the subject property and its soil types, the County Sanitarian believes it reasonable to conclude that an upgrade to accommodate up to 23 beds is possible.

The opposition has voiced concern about the maintenance of the septic tank system and has pointed to a documented failure of that system. The cause of the failure, however, appeared not to be related to the parking of vehicles over the drainfield but rather to the failure to pump the septic tank in a timely manner. The tank was pumped and no subsequent system problems have been documented.

There is no evidence that the system problem was more than an isolated occurrence or that such problems would be endemic with a group care home such as the one proposed in this application. As a condition of approval, any increase in bedrooms shall be reviewed by the Lane County Sanitarian during the processing of a building permit application.

Groundwater supply—While the subject property lies within an area identified in Lane Manual 13.010(2)(b)(i) as water quantity limited, it must be pointed out that this status is associated with residential parcel sizes of between one and three acres. The subject property is over five acres in size and it is bordered on the north, east, and south by parcels that are zoned RR-5 and are five acres or larger in size.

Several aquifer evaluations have been prepared for the subject property. The first study on record was conducted in 1988 in conjunction with a conditional use permit request for a day care center. The pump test conducted at that time demonstrated that the well on the subject property could support almost 150 students plus a single family dwelling at 2.5 gallons per minute. A more thorough aquifer evaluation was performed in 2001 as a part of the partitioning process of the subject property. The specific purpose of this test, which was generally conducted in accordance with the standards of Lane Code 13.050(13)(c)(i), was to demonstrate that there was an adequate residential water supply for the partition without adversely affecting wells on adjacent properties or the underlying aquifer. While the well used in this pump test was located on a parcel adjacent to the subject property, this factor is not determinate in that Lane Manual 9.165(2) requires that water supply test wells be constructed in areas least likely (*emphasis mine*) to produce a satisfactory water supply. The results of this test were affirmative.

An expert hired by the opponents alleges that the earlier aquifer analyses were not adequate to meet the standard of Lane Code 16.290(5)(b) or (c). Specifically questioned was the age of the earlier test (1988) and whether the well tested in 2001 was served by the same aquifer as the well on the subject property. The opponents' expert also questioned the duration of the 2001 pump test and the methods used.

As far as I can determine, the 2001 pump test conformed to all applicable requirements of Lane Code 13.050(13)(c)(i) except that no observation well was utilized. Based upon the information in the record, and the knowledge and experience of the aquifer by the expert relied upon by the applicant, it appears most likely that the well on the subject property and the well used in the 2001 aquifer evaluation are served by the same aquifer and that the aquifer is not characterized by poor transmissivity. As discussed below, the well logs in the area do not support a conclusion that the well usage has greatly diminished the capacity of the aquifer over the last 26 years. Allegations that the well used by the Twin Oaks Elementary School has gone dry was proven incorrect and at least one well in the area that had gone dry was replaced on the same property with a well that was more shallow and had a yield in excess of the average well capacity for the area. While there is some evidence in the record that the static water level of a few wells in the neighborhood has decreased, a greater weight of the evidence points to a conclusion that when individual wells "go dry," in this area it is because of the characteristics of a particular well rather than because of a limitation in the capacity of the aquifer.

Logs of 43 wells within a square mile area around the subject property show that the average well capacity is over 35 gallons per minute. Seven of these wells drilled since 2001 have an average yield of almost 60 gallons per minute. While the new wells average about 30 feet deeper than the average of all the wells, they still indicate that there is no problem with the aquifer in this area. Further, the applicant's well need only produce a nominal 1.7 gallons per minute to serve a conservative need of 2,400 gallons of water per day. Previous pump tests and the logs of nearby wells indicate that (1) this capacity exists and that (2) this amount of usage will not harm the aquifer in any way.

The applicant is not required to prove beyond a reasonable doubt that the proposed use will not exceed the carrying capacity of the existing water supply resources or that they will not create significant adverse impact on existing uses on adjacent and nearby lands that draw from the same aquifer. That is to say, it is not required to refute or explain all data or evidence that might be inconsistent with an ultimate conclusion that all applicable approval standards are met. The burden of proof carried by the applicant is one of a preponderance of the evidence. In the present case, the majority of relevant well data, pump tests, and the familiarity with the aquifer by the applicant's expert hydrologist support a conclusion that the applicant's well can support the proposed use without adversely affecting adjacent wells or adversely affecting the aquifer.

- (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 subsurface disposal system on the subject property has been inspected by Lane County and found to be functioning normally. The applicant's well has been tested and has been found to meet applicable water quality regulations.

It appears that the proposed use, when it reaches a capacity of ten people, will qualify as a State-regulated water system. If this is the case, the applicant must monitor the water supply as required by the Oregon Department of Human Resources, Public Health Division.

There is no evidence that the proposed use will operate in a manner that result in a public health hazard or cause an adverse environmental impact that would violate state or federal water quality regulations.

Lane Code 16.290(7)

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;**

The proposed use complies with this standard.

- (ii) At least 10 feet from all other property lines; and**

The proposed use complies with this setback standard.

- (iii) 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.**

This standard does not appear to be applicable.

- (b) The setback for property lines other than front-yard shall be five feet, except as provided below, for any lot or parcel containing less than 1 acre and created prior to March 30, 1984.**

The subject property is larger than 5 acres although no structure is located closer than five feet to a property line.

- (c) For mobile homes to be located in lawfully existing mobile home parks, the setbacks from a projected or existing right-of-way of a County or local-access public road shall be the same as required above, and lesser setbacks from all other mobile home**

lot lines are permitted if in compliance with Oregon Administrative Rules, Chapter 814, Division 28 -- Department of Commerce, effective on April 1, 1986.

This standard is not applicable.

- (d) **Riparian Setback Area.** Except for property located between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries, where setbacks are provided for in LC 16.253(6), the riparian setback area shall be the area between a line 50 feet above and parallel to the ordinary high water of a Class I stream designated for riparian vegetation protection in the Rural Comprehensive Plan. No structure other than a fence shall be located closer than 50 feet from the ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A modification to the riparian setback standard for a structure may be allowed provided the requirements of LC 16.253(3) or LC 16.253(6), as applicable, are met.

The subject property is not occupied by a riparian setback area.

Conclusion

The proposed application, as conditioned, is consistent with Lane Code 16.290(4) and (5) and other applicable regulations.

Respectfully Submitted,



Gary Darnielle
Lane County Hearing Official

LCOG

LANE COUNCIL OF GOVERNMENTS

February 16, 2010

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

Re: *Appeal of Hearings Official decision the Teen Challenge request (PA 09-5314) for a special use permit for a group care home within the Rural Residential District*

Dear Mr. Howe:

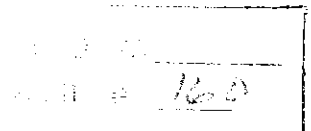
On January 26, 2010 I issued a decision reversing the Planning Director's decision denying the request by Teen Challenge for a special use permit for a group care home within the Rural Residential District. On February 8, 2010, Al and Pat Philips and Robin and Matt Freedman appealed my decision. Upon a review of these appeals, I find that the allegations of error have been adequately addressed in my decision and that a reconsideration of that decision is not warranted.

Accordingly, on the authority of Lane Code 14.535(1), I shall affirm my January 26, 2010 decision without further consideration. Please advise interested parties of this decision.

Sincerely,


Gary L. Darnielle
Lane County Hearings Official

cc: Jerry Kendall (file)





LAND MANAGEMENT DIVISION

APPEAL OF A HEARING'S 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 # PA095314B CODE: _____

FEE: \$250.00

Appellant: Al & Pat Phillips; Robin & Matt Freedman

Mailing address: 85985 Bailey Hill Road, Eugene OR 97405

Phone: 541-344-4947 Email: RFREEDMAN@hotmail.com

Signature: [Signature]

Appellant's Representative: Anne Davies

Mailing address: 433 W. 10th Ave.

Phone: (541) 953-2119 Email: acdavies@questor.net

Signature: [Signature]

You have one of two appeal options. Your appeal application will be rejected if it does not contain all the required submittals.

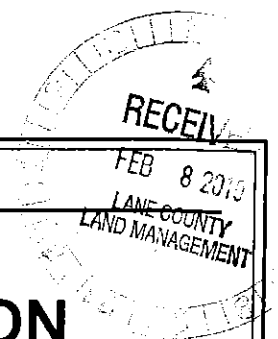
Required Option 1 submittals:

Option 1 (The appellant requests Hearing's Official Reconsideration OR Board of Commissioner Review in a Hearing.)

1. Fee is \$3,762 appeal fee, payable to Lane County. (See the reverse side for important fee information)
2. A copy of the decision being appealed, with the Department file number. File # _____
3. Indicate the deadline to submit the appeal. (Found in the Hearing Official's Decision) _____
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;

BCC #2 - 6pp.

157A + 6p.



- 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.

EXPLANATION OF THE APPEAL PROCESS UNDER OPTION 1

There are 3 steps involved in an appeal of a Hearings Official decision. Each requires a fee for services.

Step 1

When the appeal is submitted, the Hearings Official has the option to reconsider the decision (Refer to LC 14.535). If the Hearings Official reconsiders the decision, the fee is \$1,202.

Step 2

If the Hearings Official elects not to reconsider the decision, the appeal is forwarded to the Board of County Commissioners. The fee is \$1,534. The Board then decides whether or not to hear the appeal (Refer to LC 14.600)

Step 3

If the Commissioners elect to hear the appeal, the fee for the Board hearing is \$2,227.20. If the Board does not elect to hear the appeal, the parties of record may appeal the decision to the Land Use Board of Appeals (LUBA). If the Commissioners do not hear the appeal, \$150 of the \$1,534.80 fee (Step 2 above) will be refunded, in addition to the \$2,227.20, for a total refund of \$2,377.20.

Explanation of the Appeal Fee Under Option 1

The total due when submitting the appeal is \$3,762. You will get a refund if the Hearings Official reconsiders the decision, or the County Commissioners elect not to hear the appeal.

If the Hearings Official reconsiders the decision, the refund is \$2,560.

If the County Commissioners elect not to hear the appeal, the refund is \$2,377.20.

If the Board elects to hear the appeal, there is no refund.

Required Option 2 submittals:

Option 2; The appellant requests that the Board not conduct a hearing on the appeal and deem the Hearing's Official decision the final decision of the County. (Note, the Board may still choose to review the appeal pursuant to Lane Code 14.500(2) or the Hearing's Official may still reconsider the decision pursuant to LC 14.535).

1. Fee is a non-refundable \$250 appeal fee, payable to Lane County.
2. A copy of the decision being appealed, with the department file number. File # PA 09-5314
3. Indicate the deadline to submit the appeal. (Found in the Hearing Official's Decision) Feb 8, 2010
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.

5. Any additional information in support of your appeal.

EXPLANATION OF THE APPEAL PROCESS UNDER OPTION 2

LMD Staff will prepare a memorandum (with an Order) for the Board to review the appeal during their regular public meetings as an item under the Public Works section. The parties of record will be notified of the tentative meeting date on which the Board will review the appeal.

There may be no separate discussion of this item. If Board discussion is desired, that item will be considered separately in an Elect to Hear appeal hearing pursuant to Lane Code 14.600.

If the Board approves an Order and elects to not conduct a hearing, the final County land use decision may be appealed to Land Use Board of Appeals.

Anne C. Davies

Attorney at Law

February 8, 2010

Jerry Kendall
Lane County Planning
Land Management Division
125 E. 8th Ave.
Eugene, OR 97401

Re: Appeal of Hearings Officer Decision in Teen Challenge Special Use Permit
Application—PA 09-5314

Dear Jerry:

Please accept this letter as appellants' supplemental statement of appeal in the above-referenced matter. Appellants elect option 2 under the newly amended provision of the Lane Code—LC 14.515(3)(f), and request that the Board of Commissioners NOT conduct a hearing on the appeal.

As far as appellants are aware, this is the first appeal of a hearings official's decision under LC 14.515(3)(f) as amended. While appellants do not consider option 2 a true appeal, in the sense that appellants are not requesting any further review by the county, appellants will address the provisions of LC 14.515(3)(d). The hearings official exceeded his jurisdiction, failed to follow the procedures applicable to the matter, and misinterpreted applicable Lane Code provisions and state and federal law.

First, the hearings official misinterpreted and misapplied the federal statutory provisions of the Federal Fair Housing Act and cases interpreting it. The Fair Housing Act Amendments apply to housing for persons with a handicap or disability. Opponents (appellants) raised several arguments before the hearings official that the residents of the proposed group care home may not qualify as disabled persons. Rather than making a conclusion regarding that issue or even imposing a condition related to it, the hearings official merely "assumed" that the proposed use is a residential use protected by the Act. Decision at 8.

The hearings official also misinterpreted the requirements of the FHA. It appears the hearings official was of the belief that denial of the special use permit would necessarily constitute discrimination under the statute. Decision at 8 ("The [SUP] process is the county's approach for making a reasonable accommodation to its regulations and no discrimination will exist unless the application is denied or conditioned based upon factors that treat the applicant in a manner different from how an application from a single-family dwelling would

be treated.”). That is not the case, and the hearings official clearly misapplied the law in this regard.

Second, the conditions that the hearings official imposed failed to demonstrate compliance with the applicable approval criteria. While the decision indicates that the residents will not have vehicles on site, the conditions do not include that limitation. The decision acknowledges that the current septic system will not accommodate the increase in occupancy on the property, but does not impose a condition addressing the septic upgrade.

Third, the hearings official failed to adopt findings addressing the conflicting evidence. In many instances the hearings official accepts Teen Challenges’ evidence at face value, and does not even discuss the evidence and testimony presented by appellants:

- 1) The evidence regarding water quantity availability is more than 15 years old. The appellants raised issues regarding the water information supplied by applicant, and the hearings official failed to even address the expert testimony presented by opponents.
- 2) Opponents raised issues regarding past group gatherings on the property and their concern for further group gatherings that would impact their use of their properties. The hearings official’s failure to address the impacts of group gatherings or to adequately consider or impose measures to minimize the potential negative impacts of those group gatherings on neighboring property owners was error. The challenged decision purports to limit the scope of those gatherings, but no clear limitation was included as a condition of approval.
- 3) The hearings official accepts, without question, the applicant’s unsupported statement that it needs 12 students in order to be financially viable. Appellants presented contradictory evidence, which the hearings official did not even consider or address.
- 4) The hearings official dismisses the issues related to the access easement by concluding that disputes regarding easements are a private matter that may be resolved through a private action in circuit court. The hearings official misses the point raised both by opponents and by county staff. The staff e-mail dated December 15, 2009 from Mark Bernard relies on applicant’s own evidence submitted by Access Engineering in concluding that four parcels are served by the easement. Exhibit 139. The hearings official’s conclusion that fewer than that number are served by the easement is not supported by the record. The issue is not related to private enforcement of the easement. The issue is whether the easement, when constructed as required by the Lane Code provisions, will allow the group care home to be conducted as proposed. The hearings official erred in failing to address this issue.

Finally, the hearings official’s decision to approve the use, subject to conditions, is based on a misunderstanding of the requirements of the FHA and the requirements of the code. The hearings official believed that he was not permitted to deny the application, or he

would be discriminating. The cases cited by opponents demonstrate that that is not true. This basic misunderstanding of the FHA colored the entire decision.

The hearings official also misinterpreted LC 16.290(5)(a) (proposed use “[s]hall 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 hearings official reads this provision to mean “that the proposed use may not have an impact significantly greater and different than that of a single-family residence of the same size.” Decision at 10. That is not what the provision says, nor can it be interpreted to mean that. The provision prohibits a proposed use from creating significant adverse impacts on existing uses on adjacent properties. The Fair Housing Act does not allow an applicant to create greater adverse impacts on neighbors than would be allowed under other non-FHA circumstances. The FHA applicant does not get special rights; he merely is protected from being treated differently or unfairly. The hearings official misinterpreted LC 16.290(5)(a), and his decision is tainted by that error.

LC 16.290(5)(b) provides that “where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby lands.” Because the hearings official misinterpreted the application of subsection (a) regarding significant impacts, he also misapplied subsection (b). For instance, the hearings official failed to address the potential negative impacts of group events on the property. The decision also does not include conditions related to noise and other impacts addressed by opponents. The hearings official’s failure to address and/or impose conditions to minimize those impacts was error.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anne C. Davies".

Anne C. Davies

**NOTICE OF PENDING LAND USE DECISION
DENIAL BY THE LANE COUNTY PLANNING DIRECTOR**



Mailing Date:
Department File:
Property Owner/Applicant:
Agents:
Assessor's Map & Tax Lot:
Address:
Acreage:
Base Zone:
Combining Zone(s):
Comprehensive Plan:

10/20/2009

PA 09-5314
Teen Challenge International Pacific NW Centers
James A. Mann LLC and Michael Reeder, Attorney
18-04-21 #224
85989 & 85987 Bailey Hill Road
5.38 acres
Rural Residential Zone RR-5
/CAS Commercial Airport Safety Zone
Lane County Rural Comprehensive Plan (/RCP)

LAND MANAGEMENT DIVISION
http://www.LaneCounty.org/PW_LMD/

Proposal: Request for Planning Director Approval for a Group Care Home, per Lane Code 16.290(4)(b) and LC 16.290(5). The proposed facility is for disabled women and their dependent children, including up to a total of 20 individuals, excluding staff. Modifications are proposed to the existing dwelling and the existing activity building.

You own or occupy property near the above referenced property that is the subject of a land use application and pending decision for **Denial** of this application by the Lane County Planning Director.

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

The purpose of this notice is to inform you about the proposal and pending decision, where you may receive more information, and the requirements if you wish to appeal the pending decision by the Director to the Lane County Hearings Official. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

Enclosed are a vicinity map and the provided site plan of the subject property.

The proposed use(s) that would have been authorized IF this land use application had been approved:
Group care home.

Reason for Denial of the Proposal: Applicant failed to carry the burden of proof in regards to describing the scope, frequency, nature, and duration of the proposal, and the activities associated with it.

BCC # 3 - 14 pp.

The application, all documents and evidence relied upon by the applicant, the applicable criteria, and a copy of the Lane County Planning Director's report are available for inspection at the Lane County Land Management Division at no cost, and copies will be provided at reasonable cost. The name of the Lane County Land Management Division representative to contact **Jerry Kendall** and the telephone number where more information can be obtained is **541/682-4057**.

This decision will become final at 5 P.M. on 11/2/2009 unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the Lane County Land Management Division. **This form is enclosed and must be used if you wish to appeal this decision.**

1. To complete this form, fill in the required information and attach to it all of the materials and information required in numbers 2, 3 and 6 of the appeal form.
2. Then, submit the completed form to Lane County Planning Director so that it is received by him or her prior to the above mentioned time that the decision becomes final.
3. The Lane County Planning Director shall reject an appeal if it is not received prior to the time that the decision becomes final or if it is not complete.

Failure of an issue to be raised in a hearing, in person or in writing, or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

Prepared by: J. Kendall
Jerry Kendall, Associate Planner

Date: 10-19-09

Authorized by: Kent Howe
Kent Howe, Planning Director

Date: 19 Oct 09

ATTACHMENTS

1. Site Plan
2. Assessor's Map 18-04-21
3. Planning Director Staff Report (Decision)

Site Plan

Teen Challenge International
Pacific Northwest Centers

Lane County Map 18-04-21 Tax Lot 224

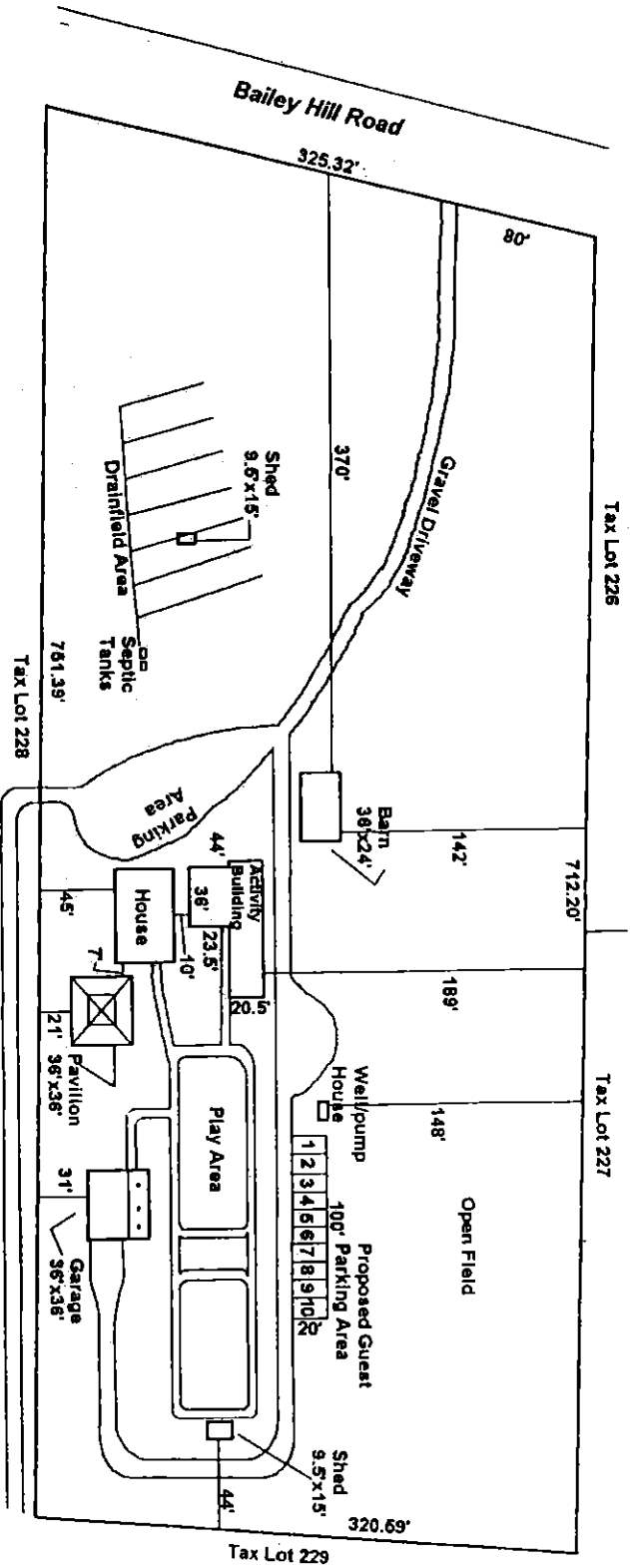


North

April 27, 2009

Scale 1" = 100'

ATTCH. #1



Prepared by James A. Mann LLC

LANE COUNTY PLANNING DIRECTOR

SPECIAL USE PERMIT STAFF REPORT



Report Date: October 19, 2009
Department File: PA 09-5314
Property Owner/Applicant: Teen Challenge International Pacific NW Centers
Agents: James A. Mann LLC and Michael Reeder, Attorney
Assessor's Map & Tax Lot: 18-04-21 #224
Address: 85989 & 85987 Bailey Hill Road
Acreage: 5.38 acres
Base Zone: Rural Residential Zone RR-5
Combining Zone(s): /CAS Commercial Airport Safety Zone
Comprehensive Plan: Lane County Rural Comprehensive Plan (/RCP)

LAND MANAGEMENT DIVISION
http://www.LaneCounty.org/PW_LMD/

Proposal: Request for Planning Director Approval for a Group Care Home, per Lane Code 16.290(4)(b) and LC 16.290(5). The proposed facility is for disabled women and their dependent children, including up to a total of 20 individuals, excluding staff. Modifications are proposed to the existing dwelling and the existing activity building.

Application History

Via application PA 07-5453 in 2007, a similar application submitted by the Teen Challenge organization was denied by the Planning Director on 11-28-07. That proposal differed from the current proposal in that the clients were to be housed in a dormitory separate from the existing dwelling. The Director found such arrangement to be in conflict with OAR 660-004-0040(7)(f), which allows only one dwelling per parcel of Rural Residential land. No appeal was filed, and the decision became final on 12-10-07.

Application for the current Special Use Permit was submitted to the Land Management Division on 5-19-09 and deemed complete on 6-19-09. Referrals were mailed to service providers and neighboring property owners on 8-12-09. The current proposal also differs from the 2007 application in two notable ways. First, the stated clients for the facility will be women, who be allowed to have their minor children on site. Secondly, the clients will be housed using the existing dwelling, with intentions to expand it along with expansion of the client base.

Statement of Criteria

Lane Code 16.290(4)(b)
Lane Code 16.290(5)

Agency Referral Responses

1.) County Transportation Planning/Mark Bernard/9-4-09:

The subject property is located south of the City of Eugene on Bailey Hill Road, a County Road classified as a Rural Major Collector. It is a 2 lane, 29 - foot wide road with a 100 foot wide platted right-of-way (that being 40' west of centerline and 60' east of centerline) at this location. Per LC 15.070(1)(d), when a road has an existing right-of-way width greater than the minimum right-of-way width specified in LC 15.070(1)(c), the building setback line shall be measured from the existing right-of-way width rather than the minimum right-of-way width. Bailey Hill Road has an additional 20'

setback per LC 15.083 which should be considered when planning for structures in addition to the setback required by the applicable zoning district. Additional setbacks are described in LC 15.010(4). For informational purposes, LC 15.070(1)(i) states "fences, walls or hedges and guard railings, or other similar landscaping or architectural devices, may be established within the setback area provided they do not exceed three and one-half feet in height and further provided that they do comply with Visual Clear Zone requirements specified in LC 15.095(3)."

According to the applicant's proposal, an existing dwelling, barn, pavilion and garage will be altered to accommodate a Group Care Home for up to 20 disabled women and their dependent children. The proposed group care home will employ up to seven full time workers, have a daily delivery of supplies and will have up to ten guest vehicles a day visiting on weekends. Residents receiving treatment at the proposed facility will not have vehicles and will therefore not generate traffic. Employee parking will be provided on site.

The subject property has an existing access that was approved in 2001 by FP # 010704. However, it is the policy of Maintenance Planning/Facility Permits to review permitted approaches that are more than 5 years old, in order to verify the approach's conformance to current County standards. A facility permit is required for the existing approach to the subject property.

A Facility Permit shall be required for placement of facilities within the right-of-way of Bailey Hill Road. Facilities and development includes, but is not limited to, road improvements, sidewalks, new or reconstructed driveway or road approach intersections, utility placements, excavation, clearing, grading, culvert placement or replacement, storm water facilities, or any other facility, thing, or appurtenance [LC 15.205(1)]. A Facility Permit is required for the existing approach to Bailey Hill Road, in order to verify that the portion of the approach that lies within the County right-of-way meets current County standards [LC 15.205(3)].

Please contact 541-682-6902 or visit <http://www.lanecounty.org/Roads/ROWPermits.htm> for information about facility permits.

Lane Manual 15.515 - Drainage

- i. Roadside ditches and other drainage facilities shall be designed solely to promote drainage of the County Road without interfering with natural waterways. Whenever a road crosses a natural channel or waterway, culverts shall be installed to maintain the natural water flow. Such natural waterway shall be identified by survey of the topography and/or aerial photography of surrounding terrain.
- ii. Water shall not be diverted from a natural channel or otherwise from private property down a County or Public roadside ditch.

2.) State Fire Marshal/Kristina Deschaine/8-13-09:

(See file record Exhibit 8 for exact wording) Per the provided site plan, the building that has been labeled "garage" has been converted into a private residential recreation room, with a building permit. Teen Challenge claims that because of the Fair Housing Act of 1991, this is a residential home with a family, not a business. The structure is residential treatment as far as the fire code is concerned.

3.) Lane County Fire District #1/Fire Marshal Heather Miller/8-24-09:

- The occupancy of this proposed use is defined as either an I-1 or a Group SR-1 based on definitions in the Oregon Fire Code and Oregon Structural Specialty Code. The definition is based on the number of occupants (more than 16 persons) and their ability to escape the building safely based on their mobility (i.e., children under the age of 6). If this application is approved, please refer the change of occupancy classification to the Lane County Building Official for further evaluation.

- Based on the occupancy classification given by the Building Official, all current applicable building and fire codes shall apply, as well as any Department of Human Services rules. Please refer any future submittals to the Fire District regarding the change of use of this facility for further review prior to approval.

4.) Lane County Building Official/Brian Craner/10-7-09:

The property appears to have a great deal of drain line (1485', installed under BP94-2106), with the equivalent capacity of three four bedroom homes. However, there were reports of a potential septic failure earlier this year. To date, Sanitation staff has not been able to investigate and I have found nothing in the record addressing the alleged failure.

Past building permit issues were reviewed and addressed at the BPRM for BP08-1648; existing garage to be converted into a rec. room and storage. It was noted that the use of the converted space was for private use only (not the classroom function originally noted on the submitted material). Any departure from private use for this converted space will require additional review to determine what code standards apply and potentially additional permits for required work. The same would be true for any significant changes in the approved uses/classifications of other structures on the property.

5.) Lane County Environmental Health/Jay Mathison/various dates:

(See file record Exhibits 89& 79 for email train)

Mr. Mathison utilized a DEQ table found in OAR 340-71-220 , which assigns a design flow of 150 gpd to each bed space for "boarding houses". Citing that 1485 lineal feet of drainfield was installed under BP 94-2106, and using the "boarding house" design flow he concluded that the present drainfield could handle 10 beds.

Via email on 10-15-09, J. Kendall asked Mr. Mathison "Knowing that the lot is 5+ acres, and from what you know of the soils and/or septic history, do you think one would be able to reasonably conclude that they can accommodate up to 23 beds? I am not seeking 100% certainty, but only a conclusion that a "reasonable person" would arrive at."

On 10-16-09, Mr. Mathison responded "Upgrade sounds reasonable. No upgrade if they can prove actual water use".

6.) Lane County/Environmental Health Specialist/Katrinka Danielson/9-24-09:

(See file record Exhibit 64 for exact wording) A water system is classified as a State Regulated water system when the system has 4+ connections or serves 10+ people for 60+ days/year. If the water system serves 25+ users or has 15+ connections and 25 of the daily users are the same users for more than 6+ months out of the year (year round residents) then it is a community water system. A State Regulated water system vs. a Community Water system differs in that they are required to take different number of water tests.

Findings of Fact

1. The property (hereafter referred to as the "subject property") is identified as Map 18-04-21 Taxlot 224. The property is 5.38 acres in size, located approximately 1.5 miles south of the Urban Growth

Boundary of Eugene at 85989 Bailey Hill Road. The subject property is zoned Rural Residential (RR5) and located within the Rural Comprehensive Plan boundary.

2. The subject property is developed with one dwelling and structures that were used to operate a former Day Care nursery on the property. The Day Care Nursery was given approval by the Lane County Hearings Official to expand its' operation to serve up to 24 children in 1985 (PA 859-85). Approval granted by the Hearings Official in 1994 to add a private school to the facility with a maximum enrollment of 49 children (PA 2969-94) was not implemented. The property was 8 acres in size at the time of issuance of those decisions.
3. The subject property is not identified within the Rural Comprehensive Plan with a Class I Stream. The Flood Insurance Rate Map 41039C1625F does not identify flood hazard areas on the subject property. The National Wetlands Inventory Map does not identify jurisdictional wetlands on the subject property. The property is comprised of soil map units #52D Hazelair (85%), #135D Willakenzie (11%), #125C Steiwer (2%), and #28C Chehulpum (1%).
4. The Applicant, Teen Challenge International Pacific Northwest Centers (Teen Challenge), is requesting Special Use Permit approval to operate a group care home as defined by Lane Code 16.290(4)(b), maintained and operated for the care, boarding, housing and training (education) of six or more dependent persons by persons who are not the parent, guardian or relative of such dependent persons. The proposed group home will serve up to twenty dependent women and their children (20 individuals maximum, including children). Staff levels will reach a maximum of 5-7 in number as the number of clients increase. At maximum client load, 3 staff members will be on the property overnight, with at least one of them awake and on duty during the night.¹ Generally, problems faced by clients include experimental use of drugs/alcohol, and educational deficits. According to the submittal, the group care home is intended to be a place of residence, encouragement, spiritual mentoring, counseling, and modeling of values in a structured home setting, with the duration of care for an individual being 12-15 months.

The Applicant's submittal also mentions that "special events" will occur (Ex. 1, p.6), but no further description of such events in terms of scope or frequency is provided.

5. There are five large buildings on the subject property which are shown on the site plan (file record Exhibit 1, Applicant's exhibit #4²). The Applicant proposes to use these buildings as follows. The wording is exactly as it appears on page 2 of the original submittal (Exhibit1), and is *italicized* below.
 - *Enlarge existing house and provide additional bedrooms as necessary and/or convenient. The Applicant requests that, should it be necessary for approval, that the Planning Director condition approval by requiring the construction of additional living space based on the requirement of the residential building code. As noted above, all sleeping arrangements on the Subject Property will be limited to the existing house.*
 - *The activity building currently has 2,600 square feet with two large common rooms, two ADA bathrooms, a kitchen, and an office and another miscellaneous room. Changes to this part of the structure, in addition to those mentioned above, would include finishing the kitchen by installing cabinets and countertops with sink (plumbing already exists).*
 - *The existing blue barn would be used as-is for a picnic pavilion/gazebo.*

¹ Staff information obtained in phone conversation between staff and agent Jim Mann on 10-12-09.

² As of the writing of this report the file record as indexed by staff consisted of 97 exhibits. Exhibit 1 is the Applicant's original submittal of 5-19-09. Within that submittal are 25 exhibits provided by the Applicant.

- *The garage would be used as a multi-purpose activity room. Significant changes to garage would include:*
 - *Removal of overhead garage doors which would be replaced with matching exterior and interior siding.*
 - *Insulation and sheetrock finish of the entire interior.*
 - *Industrial vinyl flooring installed, and*
 - *Baseboard heating would be installed.*
- There are already two existing 32" entry/exit doors installed and six 36" x 48" windows for ingress/egress. No plumbing is necessary for the use as a multi-purpose room.*

It is incidentally noted that the submittal (p.6) mentions installation of a fence with arborvitae bushes for screening of the subject property. Agent Jim Mann mentioned in the October 12 phone call with staff that these measures were no longer being considered, as they were a cost concern for the Applicant. This discrepancy should be rectified at any subsequent appeal hearing.

6. Access to the property is from Bailey Hill Road, a Lane County Road classified as a Rural Major Collector. The existing access is a driveway that provides access to the subject property subject to an easement that serves three parcels: taxlot 228 to the south and taxlots 229 and 230 to the east.
7. Fire protection is provided to the property by the Lane County Fire District #1. Police services are provided by State Police and the Lane County Sheriff.
8. The subject property is located in an area that has been designated as a water-quantity limited area in Lane Manual 13.010(2), the Spencer Creek Watershed. Documentation on available water supply and the ability to meet demand was supplied by the Applicant via the firm of EGR & Associates (Exhibits 1, 66, 82). These reports conclude that the facility would require an average flow of 1.7 gpm, and that a well on the subject property should have no significant adverse effect on water quantity on nearby properties. The quantity of water needed for the proposal has not been challenged by opponents. However, the effects of the subject property's well has been challenged by the firm of Environmental Management Services (EMS, in Exhibits 32, 76), hired by Mr. Al Phillips, a party in opposition to the proposal. Refer to the discussion under LC 16.290(5)(c) below for further details.
9. The existing sewage disposal system consists of two septic tanks of 1000 gallons and 1500 gallons, and 1485 feet of drainlines installed at the time of construction of an addition to the daycare building in 1994 (BP 94-2106). According to County Sanitarian Jay Mathison, this amount of drainline can accommodate 10 bed spaces. In addition, Mr. Mathison believes it reasonable to conclude that an upgrade to accommodate up to 23 beds is possible.
10. The subject property is bordered on the west by Bailey Hill Road. Property across the road includes Twin Oaks Elementary School which is a component of the 4J School District with 240 students.

The subject property is bordered on the south by Map 18-04-21 Taxlot 228, approximately 5 acres in size, zoned Rural Residential, and vacant. This property is accessed by a 50' wide easement across the subject property from Bailey Hill Road.

The subject property is bordered on the north by 15 acres in common ownership identified as Map 18-04-21 Taxlots 200, 226 and 227. The properties are developed with one residence at 85995 Bailey Hill Road and are zoned Rural Residential (RR-5). The file record for the 2007 decision indicates that a massage business is operated from this property. No such information is found in the current file record, except for a complaint from the Applicant (Exhibits 54). The Applicant contends (Exhibit 55) that testimony from the owners and relatives of these properties should be ignored, as

the complaints are based on the impacts to the business which has no land use approvals. The Director does not necessarily agree, as the exhibits submitted by the Phillips make no mention of the business, so the Director cannot conclude that it is in operation. Nevertheless, the property does contain a lawful dwelling whose inhabitants can be impacted by the proposal. Notwithstanding, the nominal website information provided on the business, the information on this issue has been provided to the LMD Code Enforcement Officer for investigation (Exhibit 70).

The subject property is bordered on the east by Map 18-04-21 Taxlot 229, approximately 5 acres in size, zoned Rural Residential, and developed with a residence at 85985 Bailey Hill Road. This property is accessed by a 50' wide easement across the subject property and taxlot 228 from Bailey Hill Road.

Decision

THE TEEN CHALLENGE INTERNATIONAL PACIFIC NORTHWEST CENTERS REQUEST FOR PLANNING DIRECTOR APPROVAL OF A GROUP CARE HOME AS PROVIDED BY LANE CODE 16.290(4)(b) AND LC 16.290(5) IS DENIED.

Justification for the Decision

SPECIAL USE PERMIT PA 09-5314: Special Use Permit for a Group Care Home as provided by Lane Code 16.290(4)(b) and LC 16.290(5).

Proposal Description and General Comments:

Lane Code 14.050(1)(b) requires the Applicant to use the application form provided by the Department. The Applicant properly used the "General Land Use Application" form. The first page of the form asks for a one sentence description of the proposal. In response, the Applicant wrote

"To conduct a group care home on the subject property for disabled women and their dependent children including up to 20 individuals, excluding necessary care providers, and modifications to the existing dwelling and the existing activity building."

Page 3 of the application form solicits further information on the proposal, through the attachment of additional pages if necessary. In response, the Applicant attached a "written application statement" consisting of 7 pages of text, and 25 supporting exhibits.

The text submittal reiterates that the proposal is for a "group care home" for women as per LC 16.290(4)(b) (p.1), for up to 20 individuals (p.2). In describing parking accommodations (p.6), the submittal notes that "special events" will occur, without providing any description of the scope, frequency, nature, or duration of those events. The submittal does mention that up to 10 "guest vehicles" may visit the property on weekends (p.6).

The "General Land Use Application" form also requires that a site plan be provided. The form instructs the applicant to refer to the handout entitled "How to prepare your site plan". That handout in turn, requires that all existing structures be shown. Such has been accomplished in the submitted site plan, Applicant's exhibit 4 (within the file record Exhibit 1). The handout also instructs the Applicant to show proposed structures. The submitted site plan shows an area labeled "proposed guest parking area", but no other proposed structures. Such proposed structures could include the proposed expansion of the dwelling. Instead, the Applicant has taken the position that building permit(s) will be obtained as needed.

In response to a request for modification of a structure on the subject property in November of 2008, and in light of complaints alleging noncompliant activities on the property, the Planning Director requested that the Applicant submit a Land Use Compatibility Statement (LUCS). A LUCS is commonly used by the Land Management Division as a tool to establish a written record as to whether a proposal is consistent with Lane Code provisions. In this case, the request was for a building permit to convert an existing garage to living space, specifically, a multipurpose room for recreation, as well as storage space. The LUCS was applied for via PA 08-6341. The LUCS response was issued on 11-18-08 (copy of which is found within Ex. 16 at p.22). In the LUCS submittal, the Applicant maintained that the subject property was currently being used as a single family residence, AND, for four adult women and one child residing on the property in association with the Teen Challenge organization. The LUCS concluded that housing the women and child was outright permitted by code, stating that such use "...most closely fit a group care facility used at this time for five or fewer individuals". This use is found under LC 16.290(2)(f). This provision limits clients to "...five or fewer individuals who need not be related". The LUCS further stated that "[A]nything more than five individuals would require a Special Use Permit approved for a group care home" (emphasis added).

The present application was submitted on 5-19-09. The file record is replete with testimony from neighboring landowners that the LUCS standard of five or fewer individuals had been exceeded. Such testimony includes:

- Ex. 5 (R. & M. Freedman/P. & A. Phillips), contains photos dated July 2009, showing various numbers of clients on the property (p.11-17). The text (p. 11) claims the presence of 3 mothers and 7 children on 7-25-09.
- Ex. 5 (p.18-19) contains photos of an RV gathering on the property which apparently (per Ex. 16) took place in June 2008. A sign in one of the photos (p.18) describes the event as "United We Stand/FMCA Chapter/Oregon/Coaches for Christ". The photos show a minimum of 4 large RV's.
- Ex. 5 (p.60) contains an email dated 7-21-09 to LMD Code Enforcement Officer Jane Burgess notifying her that 5 women and "at least" 7 children were in residence on the property as clients. In a reply dated 7-23-09 (p.60), Ms. Burgess states that she would not be viewing the site prior to processing of this Special Use Permit. Although each alleged violation is subject to case by case evaluation for specific circumstances, it has been LMD policy to withhold enforcement action while a Special Use Permit associated with the activity is pending. Such policy does not, however, imply that the ongoing actions have been sanctioned.
- Ex. 12 is a typical form letter that is repeated throughout the file record (see also Ex's 13-15, 17-22, 24-26, 37, 40, 41, 44-48) but signed by individual parties. This letter notes, among a list of objections, that male workers are brought onto the subject property as workers. Exhibit 35 (p.38) is an email dated 5-15-09 stating that 25-30 men arrived to do building repair/construction on site. These men are alleged to be clients of the Teen Challenge program. Exhibit 16, p.56, has 2 photos of such construction activity occurring in April, 2009.
- Ex. 16 (M. & R. Freedman) states in a text submittal dated 8-24-09 (p. 7) that 5 women residents and 11 children were present on the property, excluding the staff. One photo dated 8-22-09 (p.48) shows 8 individuals at present one time.
- Ex. 29, from Anne Davies, attorney representing the Freedmans and Phillips, notes that expansion plans for the dwelling (to accommodate the maximum 20 clients) are not provided. Ms. Davies also notes that parking areas sufficient to accommodate staff, clients, and the unspecified "special events" are not designated on the submitted site plan. Similar comments are found in Ex. 35 and 36 from Ms. Davies's clients. The Phillips (Ex. 36, p.4) add that parking appears insufficient for the weddings and work parties that have been observed on the property.
- Ex. 49 (Freedmans) documents an event occurring on 8-30-09 (a Sunday). It was apparently a graduation and/or wedding ceremony. Photos show 9 children, with a minimum of 17 vehicles

parked on the property. Of primary concern to the Freedmans was that vehicles had allegedly parked on top of the septic drainfield. Photos (p. 13, 15, 17) show the area of the septic failure. It is noted that Ex. 55 from the Applicant contains (p.13) a receipt from the "Best Septic Tank Pumping" company dated 8-31-09, which documents that the septic tanks were pumped.

- Ex. 90 (D. Phillips) documents an event which occurred on the subject property on 10-15-09. The Phillips claim that 40+ people gathered from 8:30 am-10 am for a worship event (p.2). They arrived in 25-30 vehicles, for an event described as a "One Hope" gathering. Photos of the event are included. The provided website for One Hope was printed by staff and is found as Ex. 94. The website lists the monthly "prayer gatherings" from March 19 – December 10 of 2009. All of the locations, with the exception of the listing of the "Teen Challenge" event on October 15, are actual church locations. Ex. 90 also mentions an amplified outdoor prayer service held on the subject property in 2007, attended by over 100 persons.

Lane Code 16.290(4)(b): Not more than one group care home on a lot or parcel and in a dwelling, manufactured dwelling or duplex allowed by LC 16.290(2)(a) through (c) above. A "group care home" is any home or institution maintained and operated for the care, boarding, housing or training of six or more physically, mentally or socially handicapped persons or delinquent or dependent persons by any person who is not the parent or guardian of and who is not related by blood, marriage or legal adoption to such persons. The occupancy of the dwelling for a group care home shall comply with the requirements of the building code as defined in ORS 455.010(8) and administered in ORS 455.150 and .153.

The proposal calls for a client base of up to 20 dependent women, including their children, to be housed in the group home. A minimum of six clients will receive care, housing, and training. The women will receive care for drug/alcohol use, and educational deficits. According to the Applicant, the facility will provide a place of residence, encouragement, spiritual mentoring, counseling, and modeling of values in a structured setting. Care will be of a duration of 12-15 months.

However, as detailed in the above Findings, activities have occurred on the property which has not been described in the submittal proposal. These activities do not appear to be permitted outright in all cases, and exceed the permitted activity limit sanctioned under LUCS PA 08-6341. In addition, no additional Special Use Permit proposals or justifications for the activities have been provided by the Applicant.

The LUCS limited use of the property as a dwelling and as a facility for the care of five or fewer individuals per LC 16.290(2)(f).

The activities occurring within the last 3 months of this decision cannot be dismissed under the "Mass Gathering" exemption found within the definition of "land use decision" of ORS 197.015. The documented events which occurred on 7-21-09 (Ex. 5): the onsite presence of 5 women and a minimum of 7 children; on 8-24-09 (Ex. 16): the presence of 5 women and 11 children; on 8-30-09 (ex.49): 9 children; and on 10-15-09 (Ex. 90): 40+ people and 25-30 vehicles occurred more than the once per 3 month "mass gathering" allowance.

In addition, and as pointed out by the opposition, no Special Use Permit has been granted for a "church" per LC 16.290(4)(m); no certification of compliance as a child care facility or group child care home has been provided per LC 16.290(2)(g).

No attempt has been made to quantify or qualify circumstances surrounding the graduation/wedding events, use of labor affiliated with the Teen Challenge program, RV event(s), nor other activities which might fall under the category of "special events".

The Applicant has failed to carry the burden of proof in regards to explaining the nature, scope, frequency and duration of the proposal, especially in light of the manner in which it has occurred on the property since the last decision in November of 2007.

Lane Code 16.290(5)(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;

As explained above, the submittal has been found to be lacking in a full description of the nature, scope frequency and duration of the activities comprising the proposal or associated with it. The Applicant has failed to carry the burden of proof in this regard. Without sufficient information and descriptions in this regard, the Director cannot evaluate the potential adverse impacts as required above.

In addition, no plans or explanation on the proposed expansion of the dwelling have been provided, other than to state that necessary building/sanitation permits will be obtained. The Director has not been informed if the dwelling will be expanded "straight up", or, for instance, in a southerly direction. No basic design features have been offered, for instance as to whether an open porch would be built (potential sound issues).

Parking area for 10 vehicles is shown on the site plan. No explanation or layout information has been provided for the parking area adjacent to the dwelling. No details have been provided on accommodation of large RV's, nor have vehicular numbers been provided for the "special events". Parking area for the 25-30 vehicles that utilized the property on 10-15-09 appears problematic. Will other "special events" with greater attendance occur? No information has been provided.

An accurate description of the proposal would also allow County Transportation Planning to properly evaluate the request. Without accurate traffic numbers, a proper referral response cannot be made.

Lane Code 16.290(5)(b): Where necessary, measures are taken to minimize potential negative impacts on adjacent and nearby lands;

Without being able to ascertain the potential for negative impacts as described above, the Director cannot evaluate measures to minimize such unknown impacts. The application does not contain sufficient information that would allow evaluation under this standard. The burden of proof has not been carried by the Applicant.

Lane Code 16.290(5)(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

The subject property is located in the Spencer Creek Watershed, an area that has been designated as a water-quantity limited area in Lane Manual 13.010(2). The water analysis provided by the Applicant's geologist is based on an assumption of 20 clients plus staff. The analysis is based, in part, on reliance of an aquifer test performed on a well that is over 400' east of the subject property, location of which is shown in Exhibit 97. The aquifer study itself contains the caution that "EGR does not warrant the use of this report to assess other sites which neighbor or abut the specific property referenced in this report". This aquifer study was performed for partition Plat 2001-P1519, which does not include the subject

property. In response to objections and scrutiny from the hydrogeologist hired by the opposition, subsequent testimony from the EGR firm relies more on a well within the subject property which was last tested in 1983. EGR augmented that information with historic and updated well log information, and established a 1.7 gpm flow as ample for 20 clients and staff. However, in light of the previous discussion it appears that it is premature for the Director to evaluate the adequacy of the water supply when the extent of the proposal itself is currently under question.

Likewise, Jay Mathison of Environmental Health has concluded that the existing system can serve 10 bed spaces, and can reasonably assumed to be "upgradable" to accommodate 23 bed spaces (20 client beds and 3 overnight staff). Again, whereas the parameters of the actual proposal are uncertain, the Director cannot ascertain to what degree the system may need further upgrading beyond that for 23 bed spaces.

Once again, the Burden of proof has not been carried by the Applicant.

Lane Code 16.290(5)(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.

Because the parameters of the proposal are unknown at this time, the Director cannot reasonably conclude that the (unknown) proposed use will not result in a public health hazard, or have adverse environmental impact that violate the above regulations. The burden of proof has not been carried by the Applicant.



LAND MANAGEMENT DIVISION

APPEAL OF A DIRECTOR'S 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 # PA095314A CODE: HOAPPEAL FEE: \$250

Appellant: Teen Challenge International Pacific Northwest Centers

Mailing address: 75 Tangent St. PO Box 609, Lebanon, Oregon 97355

Phone: (541) 259-3380 Email: chris.hodges@teenchallengepnw.com

Signature: _____

Appellant's Representative: Micheal M. Reeder, C/O Arnold Gallagher Percell Roberts & Potter, C.

Mailing address: PO Box 1758, Eugene, Oregon 97440-1758

Phone: (541) 484-0188 Email: mreeder@agsprp.com

Signature: M. Reeder

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: PA 09-5314
2. The \$250 appeal fee, payable to Lane County.
3. The appeal deadline, as stated in the Director's Decision: November 2, 2009 at 5 PM
4. Check one of the items below to identify your party status with the right to appeal the Director's decision:
 - ☒ I am the agent for the owner of the subject property;
 - ☒ I am the agent for the applicant for the subject application;
 - ☒ Prior to the decision by the Director, I submitted written testimony into the record
 - ☐ I am not one of the persons mentioned above, but wish to appeal the Director'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 Director's decision was made in error or why the Director should reconsider the decision;
 - b. An identification of one or more of the following general reasons for the appeal, or request for reconsideration:
 - The Director exceeded his or her authority;
 - The Director failed to follow the procedure applicable to the matter;
 - The Director rendered a decision that is unconstitutional;
 - The Director misinterpreted the Lane Code, Lane Manual, State Law, or other applicable criteria.
 - c. The Director 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.

FILE # PA (Version 10/05)

BCC # 4 - 5 pp.

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MICHEAL M. REEDER

November 2, 2009

VIA EMAIL AND HAND DELIVERED

Kent Howe
Planning Director
Land Management Division
125 East 8th Avenue
Eugene, Oregon 97401

Re: Teen Challenge International Pacific Northwest Centers
SUP Application – PA 09-5314
Appeal of Director's Decision Written Statement

Dear Mr. Howe:

As you know, this office represents Teen Challenge International Pacific Northwest Centers ("Teen Challenge" or "Appellant") in Lane County, owner of 85989 Bailey Hill Road, Map 18-04-21, Tax Lot 224 (the "Subject Property"). Please accept this letter as the Appellant's appeal statement for the Director's decision to deny the Teen Challenge special use permit ("SUP") application, PA 09-5314 (the "Application"), as required by Lane Code ("LC") 14.515(3)(d). Enclosed with this appeal statement is the \$250 appeal fee, the completed and signed appeal form, a copy of the notice of denial dated October 20, 2009, and a copy of the your decision to deny the Application (the "Decision"). For the reasons stated below, pursuant to LC 14.530, you should reconsider and reverse the Decision and approve the Application. Should you not reconsider, or should you not reverse the Decision, the Hearings Official should reverse the Decision and approve the Application.

Assignments of Error and Reasons for Reconsideration

Assignment of Error #1: The Planning Director exceeded his jurisdiction by denying the Application for supposedly being incomplete.

Although not explicitly so stated, it is clear that the Planning Director based his Decision on a theory that the Application is incomplete. The Decision states: "The Applicant has failed to carry the burden of proof in regards to explaining the nature, scope, frequency and duration of the proposal, especially in light of the manner in which it has occurred on the property since the last

decision in November 2007.” Decision, p. 9. The Decision also states that without “sufficient information and descriptions...the Director cannot evaluate” the approval criteria of LC 16.290(5)(a)-(d). Decision, pp.9-10.

For the reasons that will be explained below, and subsequently at the Hearings Official’s hearing (should the Planning Director not reconsider the Decision and approve the Application), the Decision’s conclusion that the Application was incomplete is in error. Not only is the Application complete, but it does, in fact, carry the Applicant’s burden of proof that the Application meets the criteria for approval found in LC 16.290(5)(a)-(d). The Planning Director did not evaluate the Application against the criteria because he erroneously found that the Application was incomplete. Unfortunately, the Planning Director chose to ignore the evidence in the record. However, the Planning Director does not have this authority and, therefore, exceeded his jurisdiction by refusing to review the Application in light of the criteria.

State law and the LC govern the process for determining an application’s completeness status. Both ORS 215.427(2)¹ and LC 14.050(3)(b) requires Lane County to evaluate the completeness of an application and to notify the applicant, in writing, of exactly what information is missing. If no such notification is made, the application is deemed complete on the 31st day after filing the application. An applicant who is notified that information is missing can submit additional information, refuse to submit it, or submit information that partially responds to the county’s notice. The legislative findings for the ordinance that amended LC 14.050(3)(b) to require a completeness review within 30 days states: “Once adopted, the LMD will begin implementation of the following system improvements:

- more thorough and stricter completeness reviews via a work team effort,
- development and use of standardized completeness check forms,
- and preparation, of notice and referral materials during the application completeness review period...” Finding 2.b., Ordinance No. 3-98, Findings Exhibit ‘A’, Book 160, Page 1824, filed July 16, 1998.

In the case of the Application, no such completeness review was done by Lane County. Furthermore, Lane County staff never indicated that staff believed that there was not enough information with which to make a decision. Had staff asked, it is very likely that Teen Challenge would have provided staff with the additional information. Staff never bothered to ask the

¹ ORS 215.427(2) states in relevant part: “If an application for a permit...is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. (Emphasis added). Additionally, LC 16.050(3)(b) states that applications “shall be, within 30 days of receipt, reviewed by the Director to determine if they meet the requirements of LC 14.050(1) and (2) above and are complete. Applications shall be determined to be complete and shall be accepted by the Director when they include the required information, forms and fees. When the Director determines that an application is not complete, the Director shall mail written notice to the applicant and disclose exactly what information, forms or fees are lacking.” Lane County failed to notify the applicant in writing or otherwise that the Application was “lacking in a full description of the nature, scope, frequency and duration of the activities comprising the proposal or associated with it.” Decision, p. 9.

Applicant for additional information. Although the burden of proof is generally on the applicant for a permit such as the Application, it is the Appellant's opinion that the Decision was based on a desire to kick the ultimate decision to the Hearings Official. Thus, the Decision is made in bad faith. On September 9, 2009, the Lane County planner assigned to the Application, Jerry Kendall, conducted a site visit with Teen Challenge representatives. Mr. Kendall had ample opportunity to inform Teen Challenge that he believed the Application lacked the necessary information (such as the formalities on the site plan, etc.). This he did not do.

The correct course of action by the Planning Director is to reconsider the Application and issue a decision to approve based on the evidence in the record. Short of this, the Hearings Official should reverse the Decision and approve the Application.

Assignment of Error #2: The Decision failed to address the County's responsibility to provide reasonable accommodation to Teen Challenge.

The Decision makes no mention of the requirement that Lane County reasonably accommodate the needs of Teen Challenge pursuant to the Federal Fair Housing Amendments Act ("FHAA").² As previously maintained in previous letters to Lane County, the current and intended future residents of the property are handicapped as defined by Federal law.³ The FHAA (and the Americans with Disabilities Act) prohibit anyone, including local governments, from discriminating against handicapped individuals, including those individuals with alcohol or drug addiction. Federal law preempts local zoning codes – in this instance, LC's discriminatory definition of "family." The Fair Housing Act ("FHA") requires Lane County to allow an exception to its single-family dwelling requirement because the FHA affirmatively requires governments to make reasonable accommodation for handicapped persons. By failing to even address the FHAA, Lane County has violated the FHAA. Furthermore, although Teen Challenge has shown compliance with all applicable criteria, any requirement to make Teen Challenge show compliance with a criterion that a single-family residential unit would not also be required to comply with is per se discriminatory and unreasonable and violates the FHAA.

Assignment of Error #3: The Decision violates the Appellant's Constitutional rights to due process and equal protection by (erroneously) concluding that the Applicant has violated the Lane Code 16.290(2)(f).

The Decision makes a critical, and unconstitutional, mistake by labeling the "activities" as somehow violating the LC. Decision, p. 8. These allegations deny the Appellant its constitutional rights to a fair process and an opportunity to refute the charge that it is somehow violating the LC. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 573 (1973). It is clear that one of the reasons for denial is based on the Appellant's alleged violations of the LC.

² The FHAA amended the Federal Fair Housing Act (FHA), 42 U.S.C. § 3601, *et seq.*

³ The Ninth Circuit Court of Appeals has held that: "[p]articipation in a supervised drug rehabilitation program, coupled with non-use, meets the definition of handicapped." *City of Edmonds v. Washington State Building Code Council*, 18 F.3d 802 (9th Cir. 1994) (citing 42 U.S.C. § 3602(h)).

However, no formal notice of violation(s) and no informal notices, emails, or phone calls have been received by the Appellant or its representatives from Lane County. Furthermore, Teen Challenge has at all times cooperated with Lane County and the state Fire Marshall when allegations from the neighbors were raised. It is, therefore, not only surprising, but also disappointing, that staff has chosen to make a decision to deny based (at least in part) on these erroneous allegations.⁴ Lane County has a process for dealing with alleged violations of the LC through the LC.

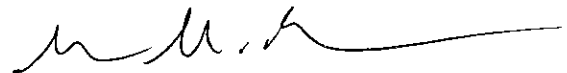
Assignment of Error #4: The Decision's findings are wholly inadequate.

By choosing to focus on alleged violations, the staff report findings do not even attempt to address how the Application does or does not meet the criteria of the LC. ORS 215.416(8)(a) requires Lane County to approve or deny the Application based on the applicable standards and criteria. Section 9 of the same statute requires that the Decision must be based upon, and supported by, a brief statement that explains the standards and criteria considered relevant to the Decision and explains the justification for the decision based on those standards and criteria. This the Decision did not do.

Conclusion

For the foregoing reasons, and for the reasons stated in the material in the record submitted by Teen Challenge, the Planning Director should reconsider the Decision and approve the Application. Alternatively, the Hearings Official should reverse the Decision and approve the Application. Thank you for your consideration in this matter.

Very truly yours,



Micheal M. Reeder
Attorney for the Applicant

MMR:jgh

Enclosures

cc: Client
James A. Mann
Matt Laird (via email only)
Steve Vorhes (via email only)

NAP - Teen Challenge Internatl. 16249\Group Home SUP 16249-3\Correspondence\SUP PD Appeal Statement 110209.doc

⁴ Curiously, when the issue was raised by Teen Challenge that one of the neighbors may be violating the LC, this was summarily dismissed in the Decision, raising serious equal protection concerns. Decision, p.6.