

**BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON**

**ORDER NO:**  
**16-03-15-06**

In the Matter of an Appeal of a Hearings Official's Decision Denying a Request for a Verification of Nonconforming Use to Allow Placement of a Manufactured Dwelling for Student Housing as Phase III of a 2004 Land Use Decision (509-PA04-06222) Approving a School Building and Two Dormitories in an Exclusive Farm Use (E-25) Zone Pursuant to LC 16.251(1). (File No. 509-PA14-05775)

**WHEREAS**, the Lane County Hearings Official made a decision denying a request for a Nonconforming Use in the Exclusive Farm Use Zone pursuant to Lane Code 16.251(1), Map T18-R02-S25, Tax Lot 304, File No. 509-PA14-05775; and

**WHEREAS**, the Lane County Planning Director received an appeal of the Hearings Official's Decision to the Board of County Commissioners pursuant to LC 14.515(3)(f)(ii) and LC 14.515(3)(f)(ii); and

**WHEREAS**, the Lane County Hearings Official has affirmed his decision on the application after reviewing the appeal in File No. 509-PA14-05775; and

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

**WHEREAS**, the Board determined that the criteria were met (Board Order 15-09-29-09) and held an on the record hearing on October 20, 2015 for the appeal; and

**WHEREAS**, the applicant/appellant and opponents provided arguments at the Board of County Commissioners' on the record public hearing and the Board fully considered the arguments and the record.

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

1. That the Hearings Official's decision denying a request for the verification of a non-conforming use is reversed and the request for verification of the non-conforming use is approved.
2. That this order is supported by the Findings in Support of the Order attached to and incorporated into this decision as Exhibit "A."

ADOPTED this 15<sup>th</sup> day of March, 2016.

  
Faye Stewart, Chair  
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 3-8-15

LANE COUNTY OFFICE OF LEGAL COUNSEL

## **ORDER EXHIBIT "A"**

### **FINDINGS IN SUPPORT OF THE ORDER**

1. This is an appeal of a Hearing Official denial of a vested rights application filed by the Laurelwood Academy. The application was filed to get county approval to complete the construction of a school located on EFU land, which received its initial Special Permit land use approval in 2005. After development of the school was initiated, state law changed in a way that would have precluded issuance of the 2005 Special Permit.
2. A fuller procedural history of this matter before the County is set out in the October 13 Staff Report at Part IV.A. (History), including paragraphs 1 through 7, which are incorporated herein. A fuller history of the permitting and development history of this project appears in the October 13 Staff Report at Part B, (Analysis of the application under the terms of PA04-06222), including paragraphs 1 through 8 thereof, which are incorporated herein. Those findings are:

The County approved a special use permit (SUP file No. PA04-06222) to allow a three phase development of a school, Laurelwood Academy a private school located on EFU zoned property with final approval on May 23, 2005. Parroting OAR 660-033-0140, Condition of Approval #1(refer to Attachment 7, page 3) noted that the permit was valid for two years and an extension could be granted for up to 12 months if certain conditions were satisfied. An extension was never requested nor granted.

OAR 660-033-0140(1) states a discretionary decision, except for a land division, approving a proposed development on agricultural or forest land outside an urban growth boundary is void two years from the date of the final decision if the development action is not initiated in that period. The applicant's approval was for a school and the applicant initiated development action to build the school within two years of the date of the final decision, so the Planning Director believes the discretionary 2004 permit on agricultural land to authorize a school is not void.

The applicant applied for a building permit for the school on January 10, 2006, (within two years from the May 23, 2005, final approval) for Phase 1 of the development; a dormitory/classroom located on the southeast portion of the property. So, pursuant to OAR 660-033-0140(1) the approval was not void. The Land Management Division (LMD) Plans Examiner approved the building plans for the Phase 1 development on February 9, 2007. The building permit (BP06-0038) was issued on September 17, 2007, and finalized on June 18, 2008, both after two year approval period. Another building permit (BP08-0879) that authorized placement of a classroom as phase 2 of the approval was issued on September 5, 2008.

The sewage disposal system (SP 06-07008) to serve Phase I (dormitory/classroom) was approved on January 10, 2006. On November 3, 2008, the LMD issued a Land Use Compatibility Statement (LUCS) (PA08-6310) to allow the Oregon Department of Environmental Quality to issue a permit to expand the sewage disposal system. On August 16, 2011, LMD issued a second LUCS (PA11-5465) to allow the expansion of the sewage disposal system to

accommodate all three phases of development of the school. DEQ authorized the system on September 1, 2011 with issuance of WPCF #118671.

On December 5, 2013, the LMD issued a Floodplain Development Permit (PA 13- 05521) to allow the placement of a manufactured structure for Phase 3 dormitory for the approved school use.

A Facility Permit to construct a driveway approach to Jasper-Lowell Road was issued on January 30, 2006, and updated and reapproved on November 6, 2013.

Securing permit approval as well as significant construction involving all three phases of the school development has been occurring virtually continuously since the original approval for a school in 2005 as demonstrated, above.

Application for land use authorization of building permit for manufactured dwelling for student housing Phase 3 was made in 2014, resulting in an application for vested rights 509-PA 14-05775 which has become the basis for this appeal.

3. The Board held an on the record hearing on October 20, 2015, and heard arguments from the appellant during the hearing.
4. The decision of the Hearing Official was entered on August 6, 2105. His Finding of Fact 1 explained the location of the school and its student population from 2005 through 2013. That finding is incorporated here.
5. Hearing Official Finding of Fact 2 stated a litany of the permitting and construction history of the school, from the initial Special Permit approval in 2005 through 2013. That finding is incorporated here.
6. Hearing Official Finding of Fact 5 quotes the state administrative rule, which applies directly to Special Use Permits on EFU land, and which specifies what action is needed to prevent a land use approval from expiring. That rule states, in relevant part:

**660-033-0140**

**Permit Expiration Dates**

(1) Except as provided for in section (5) of this rule, **a discretionary decision**, except for a land division, made after the effective date of this division approving a proposed development on agricultural or forest land outside an urban growth boundary under ORS 215.010 to 215.293 and 215.317 to 215.438 or under county legislation or regulation adopted pursuant thereto **is void two years from the date of the final decision if the development action is not initiated in that period.**

- (2) A county may grant one extension period of up to 12 months if:
- (a) An applicant makes a written request for an extension of the development approval period;
  - (b) The request is submitted to the county prior to the expiration of the approval period;

- (c) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and
  - (d) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible. ***[emphasis added]***
7. The Board finds that the land use at issue here is a single school that has three distinct parts – a men's dormitory, and administration/classroom building, and a women's dormitory. If any one of the three parts is not finished, then the school, as anticipated by the owner and initially approved by the County, will not be complete. This is not the kind of use that can be shrunk in size by eliminating one of the three parts, and still be considered to be a complete school project.
  8. The record in this matter shows that within two years of the issuance of the 2005 land use approval, building permits were applied for and issued, and construction started. Based on that activity, the Board finds that development activity was initiated prior to the two year anniversary of the land use approval. Based on that activity, the land use approval did not expire, as the Hearing Official found. Contrary to the finding of the Hearing Official, there was no need for the school developer to apply for discrete extensions of the 2005 land use approval in order to be entitled to continued issuance of building permits and development permits needed to implement the initial land use approval.