

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER 17-08-22-09

In the Matter of Electing Whether or Not to Hear an Appeal of a Hearings Official Affirmed Decision Denying a Forest Template Dwelling in the Impacted Forest Lands Zone (F-2); Assessor's Map 16-02-27, Tax Lot 1506 (File No. 509-PA15-05770/Wolcott)

WHEREAS, the Lane County Hearings Official has made a decision to affirm a Planning Director denial of a forest template dwelling application in Department File No. 509-PA15-05770; and

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

WHEREAS, the Lane County Hearings Official has affirmed his decision on the application after reviewing the appeal; and

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

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

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

1. That the appeal complies with the criteria of Lane Code 14.600(3) and arguments on the appeal should therefore be considered in an on the record hearing pursuant to Lane Code 14.400(1). Findings in support of this decision are attached as Exhibit "A."
2. That the tentative date for the on the record hearing is September 26, 2017, and the parties that qualify to participate in the hearing on the record for the appeal are the owner, applicant, appellant, and their representatives, and other parties of record.

ADOPTED this 22nd day of August, 2017.



Pat Farr, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 8-15-17 Lane County

OFFICE OF LEGAL COUNSEL

Order Exhibit "A"

FINDINGS IN SUPPORT OF THE ORDER

1. The property subject to this application, hereinafter referred to as the "subject property," is located on Tax Lot 1506, Assessor's Map 16-02-27. The subject property is not a part of a tract. It is located north of the Springfield Urban Growth Boundary, south of McGowan Creek Road. The parcel is approximately 10 acres in size, vacant, and does not have a site address. The subject property is within the Lane County Rural Comprehensive Plan boundary designated Forest and is zoned Impacted Forest Lands (F-2) consistent with the designation. All abutting properties are also zoned F-2.
2. The essential chronology pertinent to this application is as follows:

- a. In a May 19, 1919 bargain and sale deed Jonathan J. Thomas transferred an area of property (tax lot 1400) and a 40-foot wide strip of land that was an abandoned logging road (Mohawk Lumber Company Railway right-of-way) to J. F. Spores, et al. (See Book 119, Page 577 Lane County Deeds and Records.)
- b. On June 28, 1943, Catherine Spores transferred a large section of the property described above in 2.a., to Donald and Dorothy Stewart. Jonathan Thomas had previously transferred a small portion of the property to David and H.C. Auld in 1919. See Book 119, Page 579, Lane County Deeds and Records. This warranty deed excepted out a 40-foot wide abandoned logging road. (See Book 249, Page 578 Lane County Deeds and Records.) This deed cited a prior deed, recorded May 19, 1919, in which the logging road had been conveyed to David and H.C. Auld. (Volume 119, Page 579, Lane County Deeds and Records.) The Stewart property (minus the abandoned logging road) was subsequently transferred in 1949, 1951, 1952, and 1954.

This property, including the abandoned logging road that was not transferred in this conveyance, is depicted in Figure 1 of Attachment A.

- c. On May 1, 1960, what are now tax lots 1400 and 1500 (Stewart property) were transferred from Andrew and Manda Akins to Harry and Myrtle Williams by warranty deed. (See Reel 283, Instrument 39981, Lane County Deeds and Records.) At this point in time, the logging road was in the same ownership as tax lots 1400 and 1500.
- d. In 1984, Myrtle Williams partitioned the property into two parcels. This partition, Partition M1159-84, was approved on July 28, 1984 and the final partition map was recorded. (See Reel 1308, Instrument 8431240, Lane County Deeds and Records.) The final partition map did not reflect the abandoned logging road. This action, which is depicted in Figure 2 of Attachment A, created tax lot 1504 (Parcel 1) and the rest of the property (Parcel 2).
- e. In 2001, preliminary legal lot verification PA 01-05796 first verified the legal lot status of the abandoned logging road. The preliminary verification stated: "The decision that this property constitutes a legal lot will be made at the time

of the first permit or application action where a legal lot is required.” The portion of Partition 2 of M1159–84 located north of the logging road was also preliminarily verified as being a legal lot (PA 01–6145) as was the portion of Parcel located south of the logging road (PA 01–6146). (This latter action was preliminary legal lot determination of the subject property’s configuration prior to a 2003 property line adjustment.)

- f. In 2003, within Parcel 2 of M1159–84, one property line adjustment moved the western boundary of the abandoned logging road north to the west to conform to the northern and western boundary of Parcel 2 (2003–050126) and second adjustment moved the eastern boundary of the abandoned logging road south to conform to the southern boundary of Parcel 2 and west to form the northern boundary of tax lot 1506 (2003–045816). The property line adjustments were based upon the assumption that the abandoned logging road was a legal lot. (The property line adjustment is depicted in Figure 3 of Attachment A and the resulting configuration is depicted in Figure 4 of Attachment A.)
 - g. The subject property was verified as a legal lot through PA 03–05971. Notice of legal lot verifications was not required by Lane County at this time. After the verification of legal lot status, Myrtle Williams transferred the subject property to Archie and Julie Williams by quitclaim deed in 2003. Later that year, Archie and Julie Williams transferred the property to Keeland, Inc.
 - h. Tax lot 1508, located adjacent and to the north of the subject property, was approved for a “unit of land validation plat” in 2016 (PA 16–05765). Partition 2017–P2728 subsequently applied a partition plat to this property, which was duly recorded.
3. Lane County adopted its land division regulations on March 26, 1975.
 4. On November 18, 2015, the applicant submitted to Lane County Land Management Division a request to establish a forest template dwelling in the Impacted Forest Lands (F–2) zone. On December 11, 2015, staff reviewed the application materials and deemed the application incomplete. The applicant submitted additional materials and staff deemed the application complete on December 14, 2015. The applicant provided a slightly revised site plan on January 6, 2016, and then proceeded to place the application on hold for a total of 202 days as follows: On January 18, 2016, the applicant submitted an owner’s authorization and a 30-day extension to the timelines of ORS 215.427. On February 19, 2016, the agent submitted a second 30-day extension to the timelines of ORS 215.427. A third extension to ORS 215.427 timelines was submitted on April 27, 2016 for a period of 73 days. A fourth extension was submitted on June 1, 2016 for a period of 30 days. On June 20, 2016, the applicant submitted supplemental application materials. A fifth extension was submitted on July 1st for a period of 39 days. On August 5, 2016, the applicant requested that the County proceed with application review. On August 23, 2016, the Planning Director denied the application based on the determination that the application did not comply with Lane Code 16.211(5)(b). Notice of the decision was mailed to surrounding property owners and parties of record. On September 2, 2016, a timely appeal was submitted by the owner and their representative, Lanfear Consulting, LLC. The appeal included submittal of a waiver to the statutory timeline requirements of ORS 215.427 and the right to seek mandamus pursuant to ORS 215.429(1). Upon request by the applicant to resume review, notice of public hearing on the appeal was mailed on April 20, 2017.

5. On May 11, 2017, the Lane County Hearings Official conducted a public hearing. The written record was held open until May 25, 2017 with opportunity for rebuttal on June 1, 2017 and applicant's final written argument by July 8, 2017. On June 27, 2017, the Lane County Hearings Official issued a decision affirming the Planning Director's denial of the application. Notice of the Hearings Official's decision that provided for an appeal deadline of July 10, 2017 was mailed to the applicant and all parties of record on June 27, 2017.
6. On July 7, 2017, the appellant filed a timely appeal and requested that the Board of County Commissioners conduct an on the record hearing on the appeal, pursuant to LC 14.515(3)(f)(i).
7. On July 12, 2017, the Hearings Official reviewed the appeal and affirmed his decision without further consideration pursuant to LC 14.535(1).
8. In order for the Board to hear arguments on the appeal, Lane Code 14.600(3) requires one or more of the following criteria to be found by the Board to apply to the appeal:
 - The issue is of Countywide significance.
 - The issue will reoccur with frequency and there is a need for policy guidance.
 - The issue involves a unique environmental resource.
 - The Planning Director or Hearings Official recommends review.

9. Per what is now known as the WREDCO case (Weyerhaeuser Real Estate Development Company v. Polk County, 246 Or App 548 (2011)), the Court of Appeals affirmed LUBA's decision, which in part affirms local government finding that a partition plat that creates a new parcel without depicting any nested lot lines has the effect of vacating pre-existing lots, where the partition plat, description, or narrative does not include information indicating intent to preserve pre-existing lots. The Court of Appeals found further that:

"it seems highly unlikely that the legislature simultaneously intended the adoption of ORS 92.017 (1985) to restore lots that had been vacated when the lots were consolidated by a partition."

The WREDCO case altered the landscape for Lane County legal lot determinations in some instances where land containing preexisting legal lots has been partitioned. Previously, the Planning Director recognized and approved properties lawfully created by deed and subsequently subject to partition, contrary to the WREDCO findings noted above. This issue was raised to the County on appeal and once Legal Counsel and the Planning Director became aware of the past interpretation, planning staff advised applicants that . WREDCO would be applied. Many applications appealed on this issue were ultimately withdrawn and a decision on these issues was not issued prior to June 2016. On June 15, 2016, the Hearings Official issued a decision on an appeal that provided further direction on this issue. He opined in File No. PA15-05290 that WREDCO may be determinative and that generally, partitions merge prior legal lots. This solidified the direction determined by the Planning Director and County Counsel to ensure consistency with current case law, and occurred just prior to the Wolcott decision.

10. The appellant has requested that the Board conduct a hearing on the appeal. Issues raised in the appeal, specifically related to the application of the *WREDCO* case to unnoticed preliminary legal lot determinations, could affect a number of other properties throughout the County. This appeal is arguably of countywide significance for this reason.

11. Issues in this appeal involve interpretation of case law, ORS 92, and ORS 197 and not local policies or Lane Code. In the event that a comparable proposal and fact pattern comes before the Land Management Division, the Hearings Official's decision presents a reasonable interpretation of the applicability of *WREDCO* and *Davis* to the specific fact pattern of this application and status of preliminary legal lot verifications issued in 2001 and 2003 for which notice has not been issued. If these issues arise in the future, the Hearings Official's decision and case law provide guidance.

However, forest template dwelling applications are a common land use application made to the Land Management Division. The requirement for legal lot verification pursuant to Lane Code 13.020 applies to numerous uses in various zones throughout the County. For these reasons, issues raised in this appeal arguably could occur with frequency.

12. Furthermore, staff understand that perhaps the applicant/appellant's main concern is the potential discrepancy between County's past practice of recognizing "remnant parcels" as legal lots through legal lot verification applications and the Hearings Official's decision stating that ORS 92.176 provides the sole statutory remedy to cure the legal lot status of parcels that were not lawfully created. While this appears to be a matter of statutory interpretation for which the County would not have deference on appeal at LUBA, it is important to ensure that State law is applied correctly irrespective of whether this matter is appealed to LUBA. The Hearings Official's decision appears to be consistent with State law. Still, if the Board elects to hear the appeal issues on the record, Mr. Farthing and any other party of record could provide legal argument on this issue or other appeal issues. This will allow the Board another opportunity to ensure that the County's policies are consistent with its legal obligations under ORS 92 and *WREDCO*.
13. The subject property does not constitute a unique environmental resource. To the extent that the forested areas of the property constitute a unique environmental resource, the provisions of Lane Code 16.211(5) implement the intent of the Impacted Forest Lands Zone (F-2).
14. The Hearings Official has not recommended review of the appeal on the record.
15. To the extent that this appeal is of countywide significance or will occur with frequency for the reasons cited above, the Planning Director recommends review of the appeal on the record.
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 August 22, 2017, and finds that the appeal complies with the criteria of Lane Code Chapter 14.600(3), and elects to hold an on the record hearing for the appeal.
18. The tentative date for the on the record hearing is September 26, 2017, and the parties that qualify to participate in the hearing on the record for the appeal are the owner, applicant, appellant, and their representatives, and other parties of record.