

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 18-02-27-07

IN THE MATTER OF ELECTING WHETHER OR NOT TO HEAR AN APPEAL OF A HEARINGS OFFICIAL DECISION APPROVING A DWELLING IN THE IMPACTED FOREST LANDS (F-2) ZONE ON ASSESSOR'S MAP AND TAX LOT 17-01-21-00-00110, PURSUANT TO THE 'TEMPLATE DWELLING' PROVISIONS OF LANE CODE 16.211(5) AND (8). (FILE NO. 509-PA17-05553/ YU YING LIN LIVING TRUST).

WHEREAS, the Lane County Hearings Official has made a determination approving a dwelling in the Impacted Forest Lands (F-2) Zone on Assessor's Map and Tax Lot 17-01-21-00-00110, pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(5) and (8); 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)(ii); and

WHEREAS, the Lane County Hearings Official has affirmed his decision on the application after reviewing the appeal in File No. 509-PA17-05553; 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 of County Commissioners has reviewed this matter at a public meeting of the Board.

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

1. That the appeal does not comply with the criteria of Lane Code 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 December 29, 2017, and the letter affirming the decision dated January 26, 2018, attached as Exhibit "B," which found relevant approval criteria are met, are affirmed and adopted by the Board of County Commissioners as the County's final decision. The Board of County Commissioners has reviewed the appeal and the Hearings Official decision and expressly agrees with and adopts the interpretations of Lane Code 16.211 made by the Hearings Official in the decision.

ADOPTED this 27th day of February, 2018.



Jay Bozievich, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date

2-20-18



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 110, assessor’s map 17–01–21–00, about 1,000 feet north of the unincorporated community of Walterville, on Lone Fir Drive. The subject property is vacant, is about 35 acres in size, and is owned by the Applicant. The subject property is not contiguous to any other properties under the same ownership and therefore, is not part of a tract. The subject property was created in 1986 as Parcel 1 of Phase II of Partition PA 1451–84.
2. The subject property is located within what was to be the Whistle Punk Subdivision. It was created through Partition M 279–75, which is today tax lot 101, and Partition M 1950–83, from which the remainder of the proposed subdivision was comprised. Tentative approval of this subdivision was granted in January of 1985 through PA 1451–84. The tentative subdivision plan envisioned an eleven–lot subdivision to be developed in three phases, the last phase to be completed in 1989. Subsequently, because tree stoking requirements conflicted with the subdivision ordinances prohibition on the retention of forest taxation deferrals, the owner of the subdivision (Christian Enterprises) decided not to submit a final plat for the subdivision but rather requested and received a variance (PA 3875–86) from the County to develop the various phases of the proposed subdivision through the partitioning process (See Footnote 1 of the Hearings Official’s Findings).
3. Surrounding properties are of a similar size and developed with a single–family dwelling; adjacent lands are zoned (F–2) and are similar in character to the subject property. Further south are properties within the unincorporated Community of Walterville. There are no Class I streams on the property or inventoried wetland areas on the subject property and it is not located within a flood hazard area.
4. One hundred percent of the subject property’s soils are estimated to produce approximately 149 or greater cubic feet per acre per year of wood fiber per NRCS data. Therefore, the 11–parcel template test required by Lane Code 16.211(5)(c)(iii)(aa) is applicable to this application. In addition, Lane Code 16.211(5)(c)(iii)(bb) requires that at least three dwellings existed on January 1, 1993, and continue to exist on lots located within a 160 acre square centered on the subject property. The following table documents the 11 parcels relied upon by the Applicant to satisfy Lane Code 16.211(5)(c)(iii):

Count	Assessor’s Map	Tax Lot	Date of Creation	Documentation / Deed / LLV / Partition
1	17–01–28	207	1976	Lot 2 of M110–76
2	17–01–28	100	1923	Bk 155, p.42 (5/31/23)
3	17–01–21	115	1984	Parcel 1 of PA 1451–84, Phase IV
4	17–01–21	109	1984	Parcel 2 of PA 1451–84, Phase IV
5	17–01–21	101	1976	Partition M279–76
6	17–01–21	114	1984	Parcel 3 of Partition 07–84
7	17–01–21	102	1983	Parcel 1 of Partition 1950–83
8	17–01–21	113	1984	Parcel 2 of Partition 07–84
9	17–01–20	401	1977	Parcel 2 of Partition M482–77
10	17–01–20	500	1966	Reel 292, Instrument 56386

				(6/15/66); Book 76, Pg. 556 (1/16/09)
11	17-01-20	400	1909	Book 76, Pg. 556 (1/16/09)

5. Lane Code 16.211(5)(c)(iii)(bb) requires that at least three dwellings existed on January 1, 1993, and continue to exist on lots located within a 160 acre square centered on the subject property. The Applicant has relied upon the following dwellings/tax lots:

Count	Assessor's Map	Tax Lot	Year	Date of Dwelling on Property
1	17-01-21	109	1984	1990
2	17-01-21	101	1976	1976
3	17-01-21	114	1984	1992
4	17-01-21	102	1983	1985
5	17-01-20	401	1977	1975

6. The important chronology of the parcels that are relied upon by the Applicant to meet the requirements of Lane Code 16.211(5)(c)(iii)(aa) is as follows:
- a. In 1983, the County approved Partition 1950-83. Parcel 2 of this partition included the property that comprised the Whistle Punk Subdivision plus tax lots 112, 113 and 114. The applicant and property owner was Christian Enterprises. This partition plat was recorded on December 29, 1983 on Instrument No. 83 48770, Land County Deeds and Records. Partition 1950-83 was re-recorded on April 2, 1987 to implement Condition of Approval #14 of the preliminary Whistle Punk Subdivision plan.
 - b. In 1984, the County approved Partition 07-84. Parcel 3 of this partition included all of the land that comprised the Whistle Punk Subdivision plus tax lot 112 (See Footnote 2 of the Hearings Official's Findings). The applicant was Christian Enterprises and this partition plat was recorded on February 29, 1984 on Instrument No. 83 08074, Land County Deeds and Records.
 - c. Preliminary approval of the Whistle Punk Subdivision was granted by Lane County on January 3, 1985 in PA 1451-84. The final approved plan included ten lots (Whistle Punk Subdivision Lots 1-7 and 9-11) that were approved through three phases. Phase 1, which included Whistle Punk Subdivision Lots 1 and 2, was to be completed by January 21, 1987. Phase II, which included Whistle Punk Subdivision Lots 3-6, was to be completed by January 21, 1988. Phase III, which included Whistle Punk Subdivision Lots 7 and Lots 9-11, were to be completed by January 21, 1989. The approval contemplated a lot line adjustment to a prior partition (PA 1950-83) and allowed that Phase I could be completed as a partition. This preliminary subdivision approval was noticed on January 9, 1985.
 - d. The Phase I partition (PA 1451-84), was approved December 23, 1985. Parcel 1 comprised land located adjacent and to the west of the approved preliminary plan for the Whistle Punk Subdivision. Parcel 2 of this partition comprised Whistle Punk Subdivision Lots 1-6 of that preliminary subdivision. Parcel 3 of this partition comprised Lots 7, 9, 10 and 11 of the approved Whistle Punk Subdivision. Parcel 1 of this partition was comprised of tax lot 112. This partition adjusted the southern boundary of tax lot 101. This partition was recorded February 27, 1985 on Instrument No. 85 46590, Land County Deeds and Records.
 - e. For various reasons, the Applicant decided to implement the proposed land division through a series of partitions rather than gain final subdivision plat approval. Approval for this strategy was approved by the County through a variance under Lane Code

13.110(1). This approval was noticed on December 12, 1986 and allowed the Applicant to apply for final partition approval for the remaining portions of the preliminary subdivision plan.

- f. The Phase II partition (PA 1451–84) was approved December 18, 1986. Parcel 1 of this partition comprised Lot 1 of the Whistle Punk Subdivision. Parcel 2 comprises Lots 2 and 3 of that subdivision. Parcel 3 was composed of Lots 4–6 of that subdivision. This partition plat was recorded on December 24, 1986 on Instrument No. 86 52596, Lane County Deeds and Records.
 - g. The Phase III partition (PA 1451–84) was approved December 17, 1986. Parcel 1 of this partition was comprised of Lot 7 of the Whistle Punk Subdivision and Parcel 2 comprised Lot 9 of that subdivision. Parcel 3 was comprised of Whistle Punk Subdivision Lots 10 and 11. This partition plat was recorded on December 24, 1986 on Instrument No. 86 52598, Lane County Deeds and Records. None of the parcels created by the Phase III partition are included in the template test.
 - h. The Phase IV partition (PA 1451–84) was approved February 26, 1987. This partition divided Parcel 2 of the Phase II partition into Parcel 1 (Whistle Punk Subdivision Lot 2) and Parcel 2 (Whistle Punk Subdivision Lot 3). This partition plat was recorded on March 27, 1987 on Instrument No. 87 13113, Lane County Deeds and Records.
 - i. The Phase V partition (PA 1451–84) was approved February 26, 1987. This partition divided Parcel 3 of the Phase II partition into Parcel 1 (Whistle Punk Subdivision Lot 6), Parcel 2 (Whistle Punk Subdivision Lot 5), and Parcel 3 (Whistle Punk Subdivision Lot 4). This partition plat was recorded on March 27, 1987 on Instrument No. 87 13111, Lane County Deeds and Records. This partition was re-recorded to adjust the boundary between Parcels 2 and 3. It was recorded in 1988 on Instrument 88 50469, Lane County Deeds and Records.
 - j. The Phase VI partition (PA 1451–84) was approved February 26, 1987. This partition divided Parcel 3 of the Phase III partition into Parcel 1 (Whistle Punk Subdivision Lot 10) and Parcel 2 (Whistle Punk Subdivision Lot 11). This partition plat was recorded on March 27, 1987 on Instrument No. 87 13109, Lane County Deeds and Records.
 - k. All of the phased partitions conformed to the lot–line boundaries approved in the preliminary Whistle Punk Subdivision plan.
7. On June 26, 2017, the request for a Director review of an application for a dwelling in the Impacted Forest Lands (F-2) Zone pursuant to the 'Template Dwelling' provisions of Lane Code 16.211(5) and (8) was submitted to the Land Management Division. The application was reviewed and accepted as complete on July 21, 2017. On October 16, 2017, the Planning Director approved the application. Notice of the decision was mailed to surrounding property owners. On October 30, 2017, a timely appeal was submitted by Andrew Mulkey, on behalf of LandWatch Lane County.
8. On November 30, 2017, the Lane County Hearings Official conducted a public hearing. The record was held open until December 21, 2017. On December 29, 2017, the Lane County Hearings Official issued a decision affirming and approving the Planning Director's decision. Notice of the Hearings Official's decision was mailed to the applicant and all parties of record on January 4, 2018.
9. On January 16, 2018, Lauri Segel, represented by Andrew Mulkey, filed a timely appeal on behalf of LandWatch Lane County. The Appellants request that the Board of County Commissioners not conduct a hearing on the appeal and deem the Hearings Officer's decision the final decision of the County, pursuant to LC 14.515(3)(f)(ii).

10. On January 18, 2018, the Hearings Official reviewed the appeal and affirmed his decision without further consideration pursuant to LC 14.535(1). On January 26, 2018, the Hearings Official issued a revised letter affirming his decision and correcting several typographical errors in his January 18, 2018 letter.
11. 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.*
12. The Board finds that the issues raised in this appeal are not of countywide significance. This appeal involves an unusual phased subdivision that necessitated a variance to allow the resulting parcels to be created through partitions in order to retain their forest taxation deferrals. The approvals of both the phased subdivision and the variance were noticed and not appealed. The partitioning proceeded in accordance with the ORS 92.010(9) restrictions on the partitioning of land and in accordance with the approved preliminary subdivision plan. The various partitions were properly recorded. The end result is the lawfully created parcels, some of which serve to meet the forest template dwelling requirements of Lane Code 16.211. The Hearings Official's decision includes a detailed evaluation of the history of the properties in question and presents reasonable interpretations of Lane Code 16.211.
13. The Board does not believe that the issue will reoccur with frequency. This appeal involves an unusual phased subdivision that necessitated a variance to allow the resulting parcels to be created through partitions in order to retain their forest taxation deferrals. Because of the unusual fact pattern in this appeal and the specific circumstances surrounding the Whistle Punk Subdivision, the issues are not anticipated to reoccur with frequency. In the event that a similar fact pattern is presented, the Hearings Official's decision provides sufficient guidance.
14. The Board finds that the subject property does not constitute a unique environmental resource. The issues raised in this appeal do not relate to, or involve, a unique environmental resource. The property does not contain any unique or notable environmental resources, nor does it contain any regulated water bodies, rivers, creeks, or wetlands.
15. The Planning Director does not recommend review of the appeal on the record for the reasons cited above.
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 on February 27, 2018, finds that the appeal does not comply with the criteria of Lane Code Chapter 14.600(3), declines further review, and elects not to hold an on the record hearing for the appeal.
18. The Board affirms and adopts the Lane County Hearings Official decision dated December 13, 2018, the letter affirming the decision dated December 29, 2017, as the County's final decision in this matter, and expressly agrees with and adopts the interpretations of Lane Code 16.211 made by the Hearings Official in the decision.



January 26, 2018

Ms. Lydia Kaye, Manager
Land Management Division
3050 N. Delta Highway
Eugene, OR 97408

Re: *Appeal of an affirmation of the Planning Director approval of the request (PA 17-05553) by the Yu Ying Lin Living Trust for a forest template dwelling on Tax Lot 110, Assessor's Map 17-01-21.*


Dear Ms. Kaye:

This letter corrects several errors contained in a January 18, 2018 letter denying the reconsideration of a December 29, 2017 Hearings Official decision in PA 17-05533. This letter corrects those errors. Apologies to all concerned.

On December 29, 2017, I issued a decision affirming the Planning Director's approval of the request (PA 17-05533) by the Yu Ying Lin Living Trust for a forest template dwelling on Tax Lot 110, Assessor's Map 17-01-21. On January 16, 2018 this decision was appealed by the LandWatch Lane County. Upon a review of this appeal, I find that the allegations of error have been adequately addressed in that decision and that a reconsideration is not warranted.

Accordingly, on the authority of Lane Code 14.535(1), I shall affirm my December 29, 2017 reconsidered decision without further consideration. Please advise interested parties of this decision.

Sincerely,


Gary L. Darnielle
Lane County Hearings Official

cc: Kent Howe (file)

**LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR APPROVAL OF A TEMPLATE
DWELLING WITHIN AN F-2 DISTRICT**

Application Summary

On June 22, 2017, a request to establish a dwelling in the Impacted Forest Lands (F-2) zone was submitted to Lane County Land Management Division by Land Planning Consultants, an agent for the Applicant, Yu Ying Lin Living Trust. The application was deemed complete on July 21, 2017. On October 16, 2017, the Director issued a determination that the subject property complied with the applicable standards and criteria for a Forest Template Dwelling pursuant to LC 16.211(5) and (8). Notice of the determination was mailed to surrounding property owners. On October 30, 2017, a timely appeal was submitted by LandWatch Lane County.

Parties of Record

Yu Ling Lin Living Trust	LandWatch Lane County	Land Planning Consultants
Andrew Mulkey	Tom Fountain	

Application History

Hearing Date: November 30, 2017
(Record Held Open Until December 21, 2017)

Decision Date: December 29, 2017

Appeal Deadline

An appeal must be filed within 12 days of the issuance of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

Lane Code 16.211(5)&(8)

Findings of Fact

1. The property subject to this application, hereinafter referred to as the “subject property,” is located on tax lot 110, assessor’s map 17-01-21-00, about 1,000 feet north of the unincorporated community of Walterille, on Lone Fir Drive. The subject property is vacant, is about 35 acres in size, and is owned by the Applicant. The subject property is not contiguous to any other properties under

the same ownership and therefore, is not part of a tract. The subject property was created in 1986 as Parcel 1 of Phase II of Partition PA 1451-84.

2. The subject property is located within what was to be the Whistle Punk Subdivision. It was created through Partition M 279-75, which is today tax lot 101, and Partition M 1950-83, from which the remainder of the proposed subdivision was comprised. Tentative approval of this subdivision was granted in January of 1985 through PA 1451-84. The tentative subdivision plan envisioned an eleven-lot subdivision to be developed in three phases, the last phase to be completed in 1989. Subsequently, because tree stoking requirements conflicted with the subdivision ordinances prohibition on the retention of forest taxation deferrals, the owner of the subdivision (Christian Enterprises) decided not to submit a final plat for the subdivision but rather requested and received a variance (PA 3875-86) from the County to develop the various phases of the proposed subdivision through the partitioning process.¹

Surrounding properties are of a similar size and developed with a single-family dwelling; adjacent lands are zoned (F-2) and are similar in character to the subject property. Further south are properties within the unincorporated Community of Walterville. There are no Class I streams on the property or inventoried wetland areas on the subject property and it is not located within a flood hazard area.

3. One hundred percent of the subject property's soils are estimated to produce approximately 149 or greater cubic feet per acre per year of wood fiber per NRCS data. Therefore, the 11-parcel template test required by Lane Code 16.211(5)(c)(iii)(aa) is applicable to this application. In addition, Lane Code 16.211(5)(c)(iii)(bb) requires that at least three dwellings existed on January 1, 1993, and continue to exist on lots located within a 160 acre square centered on the subject property. The following table documents the 11 parcels relied upon by the Applicant to satisfy Lane Code 16.211(5)(c)(iii):

Count	Assessor's Map	Tax Lot	Date of Creation	Documentation / Deed / LLV / Partition
1	17-01-28	207	1976	Lot 2 of M110-76
2	17-01-28	100	1923	Bk 155, p.42 (5/31/23)
3	17-01-21	115	1984	Parcel 1 of PA 1451-84, Phase IV
4	17-01-21	109	1984	Parcel 2 of PA 1451-84, Phase IV

¹ Apparently, the variance was used to avoid gaining preliminary approval for the partitions. That is, based upon the preliminary approval of the Whistle Punk Subdivision plan, the different phases of the subdivision were implemented through the partitioning process except that no preliminary partition plan was approved; the County approved a final plat for each partition as it was requested.

5	17-01-21	101	1976	Partition M279-76
6	17-01-21	114	1984	Parcel 3 of Partition 07-84
7	17-01-21	102	1983	Parcel 1 of Partition 1950-83
8	17-01-21	113	1984	Parcel 2 of Partition 07-84
9	17-01-20	401	1977	Parcel 2 of Partition M482-77
10	17-01-20	500	1966	Reel 292, Instrument 56386 (6/15/66); Book 76, Pg. 556 (1/16/09)
11	17-01-20	400	1909	Book 76, Pg. 556 (1/16/09)

4. Lane Code 16.211(5)(c)(iii)(bb) requires that at least three dwellings existed on January 1, 1993, and continue to exist on lots located within a 160 acre square centered on the subject property. The Applicant has relied upon the following dwellings/tax lots:

Count	Assessor's Map	Tax Lot	Year	Date of Dwelling on Property
1	17-01-21	109	1984	1990
2	17-01-21	101	1976	1976
3	17-01-21	114	1984	1992
4	17-01-21	102	1983	1985
5	17-01-20	401	1977	1975

5. The important chronology of the parcels that are relied upon by the Applicant to meet the requirements of Lane Code 16.211(5)(c)(iii)(aa) is as follows:
- a. In 1983, the County approved Partition 1950-83. Parcel 2 of this partition included the property that comprised the Whistle Punk Subdivision plus tax lots 112, 113 and 114. The applicant and property owner was Christian Enterprises. This partition plat was recorded on December 29, 1983 on Instrument No. 83 48770, Land County Deeds and Records. Partition 1950-83 was re-recorded on April 2, 1987 to implement Condition of Approval #14 of the preliminary Whistle Punk Subdivision plan.
 - b. In 1984, the County approved Partition 07-84. Parcel 3 of this partition included all of the land that comprised the Whistle Punk Subdivision plus tax lot 112.² The applicant was Christian Enterprises and this partition plat was recorded on February 29, 1984 on Instrument No. 83 08074, Land County Deeds and Records.
 - c. Preliminary approval of the Whistle Punk Subdivision was granted by Lane County on January 3, 1985 in PA 1451-84. The final approved plan

² This tax lot has been referred to as "Lot 8" but was never included within the approved preliminary subdivision plan boundary.

included ten lots (Whistle Punk Subdivision Lots 1-7 and 9-11) that were approved through three phases. Phase 1, which included Whistle Punk Subdivision Lots 1 and 2, was to be completed by January 21, 1987. Phase II, which included Whistle Punk Subdivision Lots 3-6, was to be completed by January 21, 1988. Phase III, which included Whistle Punk Subdivision Lots 7 and Lots 9-11, were to be completed by January 21, 1989. The approval contemplated a lot line adjustment to a prior partition (PA 1950-83) and allowed that Phase I could be completed as a partition. This preliminary subdivision approval was noticed on January 9, 1985.

- d. The Phase I partition (PA 1451-84), was approved December 23, 1985. Parcel 1 comprised land located adjacent and to the west of the approved preliminary plan for the Whistle Punk Subdivision. Parcel 2 of this partition comprised Whistle Punk Subdivision Lots 1-6 of that preliminary subdivision. Parcel 3 of this partition comprised Lots 7, 9, 10 and 11 of the approved Whistle Punk Subdivision. Parcel 1 of this partition was comprised of tax lot 112. This partition adjusted the southern boundary of tax lot 101. This partition was recorded February 27, 1985 on Instrument No. 85 46590, Lane County Deeds and Records.
- e. For various reasons, the Applicant decided to implement the proposed land division through a series of partitions rather than gain final subdivision plat approval. Approval for this strategy was approved by the County through a variance under Lane Code 13.110(1). This approval was noticed on December 12, 1986 and allowed the Applicant to apply for final partition approval for the remaining portions of the preliminary subdivision plan.
- f. The Phase II partition (PA 1451-84) was approved December 18, 1986. Parcel 1 of this partition comprised Lot 1 of the Whistle Punk Subdivision. Parcel 2 comprise Lots 2 and 3 of that subdivision. Parcel 3 was composed of Lots 4-6 of that subdivision. This partition plat was recorded on December 24, 1986 on Instrument No. 86 52596, Lane County Deeds and Records.
- g. The Phase III partition (PA 1451-84) was approved December 17, 1986. Parcel 1 of this partition was comprised of Lot 7 of the Whistle Punk Subdivision and Parcel 2 comprised Lot 9 of that subdivision. Parcel 3 was comprised of Whistle Punk Subdivision Lots 10 and 11. This partition plat was recorded on December 24, 1986 on Instrument No. 86 52598, Lane County Deeds and Records. None of the parcels created by the Phase III partition are included in the template test.
- h. The Phase IV partition (PA 1451-84) was approved February 26, 1987. This partition divided Parcel 2 of the Phase II partition into Parcel 1 (Whistle Punk Subdivision Lot 2) and Parcel 2 (Whistle Punk Subdivision

Lot 3). This partition plat was recorded on March 27, 1987 on Instrument No. 87 13113, Lane County Deeds and Records.

- i. The Phase V partition (PA 1451-84) was approved February 26, 1987. This partition divided Parcel 3 of the Phase II partition into Parcel 1 (Whistle Punk Subdivision Lot 6), Parcel 2 (Whistle Punk Subdivision Lot 5), and Parcel 3 (Whistle Punk Subdivision Lot 4). This partition plat was recorded on March 27, 1987 on Instrument No. 87 13111, Lane County Deeds and Records. This partition was re-recorded to adjust the boundary between Parcels 2 and 3. It was recorded in 1988 on Instrument 88 50469, Lane County Deeds and Records.
- j. The Phase VI partition (PA 1451-84) was approved February 26, 1987. This partition divided Parcel 3 of the Phase III partition into Parcel 1 (Whistle Punk Subdivision Lot 10) and Parcel 2 (Whistle Punk Subdivision Lot 11). This partition plat was recorded on March 27, 1987 on Instrument No. 87 13109, Lane County Deeds and Records.

All of the phased partitions conformed to the lot-line boundaries approved in the preliminary Whistle Punk Subdivision plan.

Decision

THE PLANNING DIRECTOR DECISION APPROVING THE REQUEST (PA 17-05553) BY THE YU YING LIN LIVING TRUST FOR A TEMPLATE FOREST DWELLING ON TAX LOT 110, ASSESSOR'S MAP 17-01-21 IS AFFIRMED.

Justification for the Decision (Conclusion)

The subject property is zoned F-2 Impacted Forest Land. The Applicant is requesting approval to construct a single-family dwelling as provided by Lane Code 16.211(5)(c). Dwellings authorized by this provision are known as "forest template" dwellings because some of the applicable approval criteria of Lane Code 16.211(5) must be analyzed through the placement of a 160-acre square template centered on the center of the subject property (tract). Additionally, the placement of a dwelling on non-impacted forest land must meet the siting standards provided by Lane Code 16.211(8).

Under the template dwelling regulations, the standards differ depending upon the soil productivity of the property upon which the dwelling is to be placed. In the present case, a majority of the soils on the subject property are capable of producing more than 85 cubic feet per acre per year of wood fiber. Therefore, Lane Code 16.211(5)(c)(iii) is applicable. Under Subsection (bb) of this standard, the applicant must demonstrate that there were three dwellings that existed on January 1, 1993 and continue to exist that are located within the 160-acre square template that is centered on the subject property.

The allegations of error raised by the Appellant in its appeal are as follows:

1. *The partitioning of the Whistle Punk Subdivision property was illegal as no preliminary partition plans were approved; the Applicant went directly to final plat approval.*

Lane Code 16.211(5)(b) requires that the lot upon which a template dwelling is located be lawfully created. The Appellant correctly observes that the phased partitions did not undergo the preliminary partition plan approval but only received final plat approval.

The procedure followed by the Applicant and approved by the County was, to say the least, extraordinary. However, the fact that a parcel was not created strictly according to the procedures in the Code does not necessarily mean that they were unlawfully created. The variance approval, which was noticed and not appealed, allowed the Applicant to create the approved land division through partitioning rather than through final subdivision plat approval. In other words, the preliminary subdivision plan approval was intended to serve as the preliminary plan approval for the partitions. It should be noted that this preliminary approval was also noticed and not appealed. It seems that as long as the partitions strictly adhered to the lot scheme approved under the preliminary subdivision plan, then there was no substantive prejudice that was created by changing the procedure that led up to that end.

In reviewing the six phased partitions of the property that constituted the proposed Whistle Punk Subdivision, it appears that all lot lines were honored and all of the conditions of the preliminary approval, including the time deadlines for the lots included in each phase, were observed. After the final partition (Phase VI), all of the lots of the proposed subdivision were formed and with the exact boundaries as approved in the preliminary subdivision plan.

The Appellant has also argued that the partitions, collectively violated the ORS 92.010(9) definition of “partitioning land” in that land was divided into more than three parcels within a calendar year. I disagree based upon the reasoning set out in the narrative immediately below.

This allegation of error is dismissed.

2. *The partitions violated ORS Chapter 92 because multiple partitions of the same property occurred during the same calendar year.*

The Parcels 2 and 3 Phase I partition included the property that comprised the preliminary Whistle Punk Subdivision plan. This partition was recorded (became final) on February 27, 1985. No other partitions of this property occurred in 1985.

On December 24, 1986, the Phase II and Phase III partitions were recorded. The Phase II partition comprised subdivision lots 1-6 and the Phase III partition

comprised subdivision lots 7 and 9-11. Neither of these partitions violated ORS 92.010(9) as they affected different properties.

The Phase IV, V and VI partitions were recorded on March 27, 1987. Each of these partitions partitioned a different piece of property (or prior partition parcel).

In conclusion, no property within the boundaries of the preliminary Whistle Punk Subdivision plan was partitioned more than once within a calendar year.

This allegation of error is dismissed.

3. *The variance was not noticed.*

The variance approval was noticed on December 12, 1986. It was not appealed.

This allegation of error is dismissed.

4. *The re-recording of the 1984 and 1987 partition plats vacated the underlying property boundaries.*

The Appellant relies upon the *Weyerhaeuser Real Estate Development Company v. Polk County*, 246 Or App 548, 267 P3rd 855 (2011) for the proposition that underlying parcels were vacated. Partition PA 1950-83, originally approved in 1983, was re-recorded on October 24, 1984 to adjust the lot lines between Parcel 2 and Parcel 3 of Partition PA 1950-83. On April 2, 1987, the partition was again re-recorded to implement Condition of Approval #14 of the preliminary Whistle Punk Subdivision plan which required that the northern boundary of the subdivision coincide with Partition PA 1950-83. The obvious intent of these re-recordings was not to vacate underlying property lines but to accommodate lot line adjustments that were required by the approved variance procedure. The County acknowledged this fact on March 6, 1987.

The clear intent of the re-recording of PA 1950-83 was to conform that partition to the preliminary Whistle Punk Subdivision plan. This was recognized by the Applicant and the County. Prior to 2009, Lane County had no process for approving lot line adjustments³ and it was standard procedure to accomplish boundary adjustments either through deed or partition.

5. *Parcels that consist of roadways, powerlines, and canals cannot be used as parcels that can be counted for a template dwelling approval.*

I believe that I understand the point raised by the Appellant and am not unsympathetic to that point of view. That is, the presumed intent of the template dwelling regulations is to allow an additional (template) forest dwelling where

³ Lane County Ordinance 2-09.

soil characteristics and property density are appropriate. Thus, the statute contemplates a lesser standard (number of nearby parcels) where the woodland productivity of the soils is least. By the same token, when the soils are more productive then it is necessary to show a denser parcelization and presumably a lesser potential for combining parcels for forest management purposes.

Unfortunately, the statute and the Lane Code do not distinguish between the character of the lots and parcels that exist within the 160-acre template as of January 1, 1993. It is possible that legislative history might shine some light on this aspect but the record is silent in this regard. Thus, an ownership of a parcel that constitutes a road or a powerline or canal must be treated the same way as a parcel intended for other, more standard purposes as long as they are lawfully created in fee ownership. This view recognizes that a road may be vacated and a powerline removed and sold and that property line adjustment regulations may make those lots and parcels viable for other uses.

This allegation of error is dismissed.

Summary

While unconventional, the process followed by the Applicant to divide the property comprised by the Whistle Punk Subdivision was necessary to allow the resulting parcels to retain their forest taxation deferrals. The preliminary subdivision plan approval was noticed and was not appealed. The variance allowed the preliminary subdivision approval, which is generally more rigorous than the standards applied to partitioning, to serve as preliminary plan approval for the partitions. The variance decision was noticed and was not appealed. The partitioning proceeded in accordance with the ORS 92.010(9) restrictions on the partitioning of land and in accordance with the approved preliminary subdivision plan. The various partitions were properly recorded. The end result is the lawfully created parcels, some of which serve to meet the forest template dwelling requirements of Lane Code 16.211(5)(c)(iii)(aa). Finally, I believe that the re-recording of partitions to adjust property line boundaries evidences sufficient intent of the Applicant to avoid a conclusion that they acted to vacate underlying property lines. For these reasons I have affirmed the Planning Director's approval of this application.

Respectfully Submitted,



Gary Darnielle
Lane County Hearings Official

Andrew Mulkey

Attorney at Law

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January 16, 2018

Via Hand Delivery

Lane County Public Works Department
3050 North Delta Highway
Eugene, OR 97408
(541) 682-6900

**Re: Appeal by Option 2 of Hearings Official Decision in 509-PA17-05553, Yu
Ying Lin Living Trust Forest Template Dwelling, 17-01-21-00, Tax Lot 110.**

Appellant's Name

LandWatch Lane County
PO Box 5347
Eugene OR 97405
(541) 741-3625

Authorized Representative

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Identification of the Decision Sought to be Reviewed

The appellant listed above hereby appeals the Hearing Official's December 29, 2017 decision, which denied appellant's appeal of the Planning Director's approval of a Forest Template Dwelling on Tax Lot 110, Map No. 17-01-21-00.

Copy of the Decision

A copy of the Hearings Official's December 29, 2017 decision and the Director's decision is attached hereto.

Appeal Deadline

The appeal deadline is January 16, 2018. Chapter 215 section 416(10) requires the County to provide notice to parties of a decision by the hearings official. Subsection (11) of that section requires no less than 12 days for an appeal. ORS 215.416(11)(a)(C). Lane Code 14.510 sets a 12-day appeal deadline from the “date of signing of the decision *provided notice of the decision occurs as required by law.*” In this case, the Planning Department failed to notice the decision as required by law. The Planning Department sent out an initial copy of the Hearings Official’s decision that was missing every other page, and the decision did not include an appeal form. The appellant asked the Planning Department to re-notice the decision and send out a complete copy of the decision so that appellant could review the full decision to determine whether to appeal. The Planning Department sent notice of the decision on January 4, 2018. From that date, the 12-day appeal period ends on January 16, 2018.

Appeal Option

Appellant requests Option 2 as set forth in the County’s attached appeal form. Appellant requests that the Board of Commissioners not conduct a hearing on the appeal and deem the Hearings Officer’s decision the final decision of the County.

Appellant’s Standing

Appellant LandWatch Lane County appealed the Director’s decision in 509-PA17-05553 to the Hearings Official, and Appellant participated in those proceedings in person and in writing.

Appeal Fee

Please find the attached check in the amount of \$250.00 for the appeal fee.

Grounds for Appeal

The Appellant hereby incorporates all prior written and oral testimony submitted in the proceedings below. Appellant intends to preserve all arguments raised below. The following list of issues on appeal is not exhaustive.

Error:

The Hearings Official erred when he found that the variance at issue in these proceedings complied with and was approved under Lane Code 13.110(1). In this case, the applicant’s predecessor in interest, Christian Enterprises, applied for a variance from the subdivision requirements and asked to complete a tentative subdivision through a series of partitions. Lane Code 13.110(1) limits completion of a subdivision to at most three phases. The code provision does not allow an applicant to complete a subdivision through a series of partitions. “Phase I may be completed as a partition... depending upon the number of subunits of land included in this phase,” but “Phases II and III *must be completed as subdivisions.*” *Id.* (emphasis added). In this case, Christian Enterprises completed the subdivision in 6 phases, not three, and the owner completed all the phases as partitions. To comply with Lane Code 13.110(1) “Phases II and III

must have been completed as subdivisions. They were not, and so the Hearings Official's finding misinterprets applicable law.

Error:

The Hearings Official misinterpreted and misapplied the Court of Appeals decision in *Weyerhaeuser Real Estate Development Co. v. Polk County*, 246 Or App 548 (2011). When the applicant re-recorded partitions in 1984 and 1987, those partition vacated underlying lot and parcel lines.

Error:

The Hearings Official erred in concluding that the partitions recorded by the property owner, Christian Enterprises, between 1985 and 1987 complied with ORS chapter 92. Those partitions resulted in unlawful subdivisions as defined by ORS chapter 92. Specifically, the Hearings Official erred by finding that none of the partitions violated ORS 92.010(9) because they affected different properties. Those divisions divided a tract of land into more than three parcels within a calendar year, which qualifies as a subdivision.

Error:

The Hearings Official lacked sufficient evidence in the record to conclude that "all of the lots of the proposed subdivision were formed and with the exact boundaries as approved in the preliminary subdivision plan. The Hearings Official also lacked sufficient evidence in the record to conclude that "all lot lines were honored and all of the conditions of the preliminary approval... were observed."

Error:

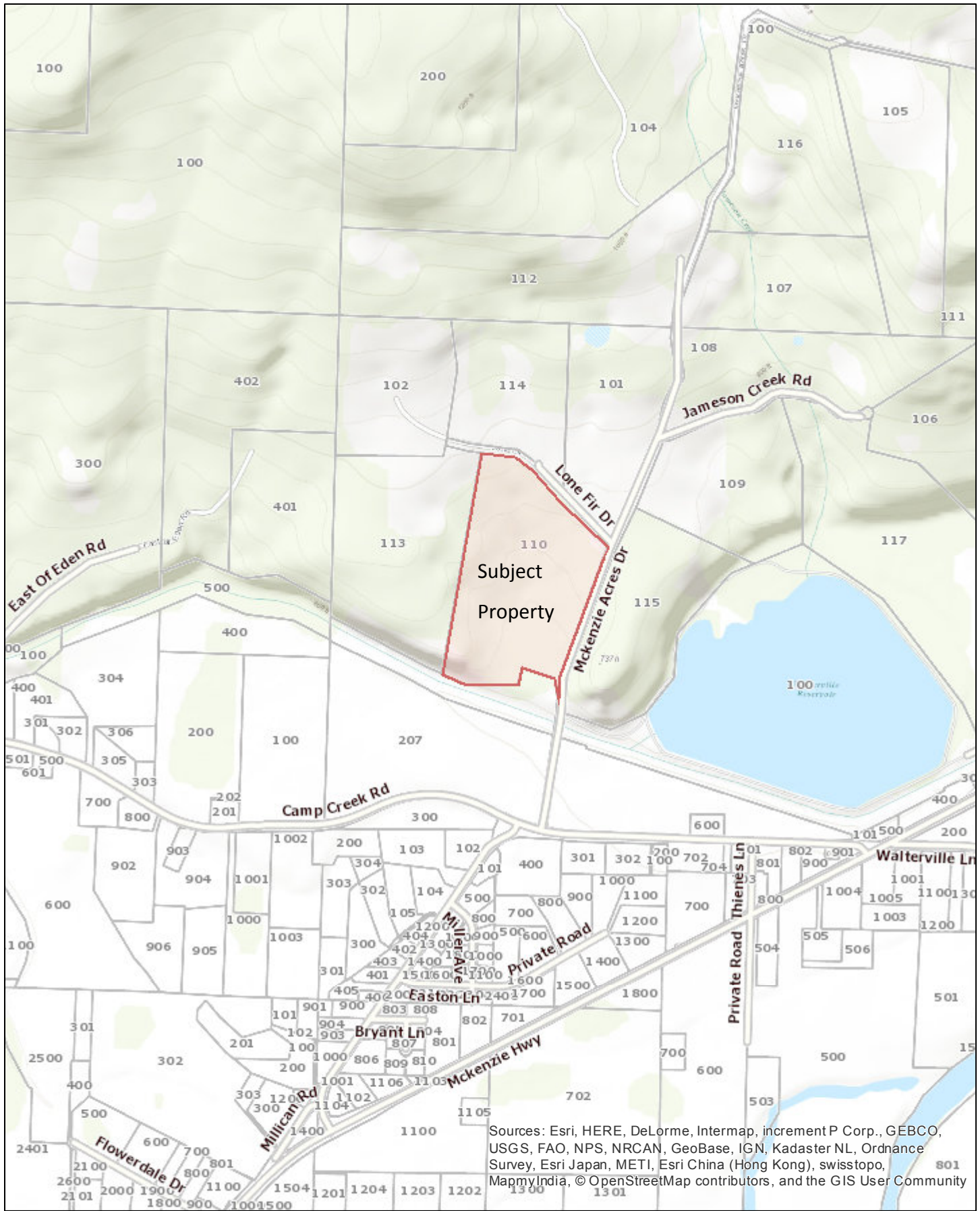
The Hearings Official misinterpreted the law and exceeded his jurisdiction in concluding that the subject parcel and the parcels within the template qualified were lawfully established parcels and that the subject property qualified for a forest template dwelling.

For the above reasons, the Hearings Official's decision must be reversed and applicant's request for approval must be denied. By affirming the Director's decision, the Hearings Official misinterpreted applicable law and exceeded his jurisdiction. The decision by the Hearings Official exceeded his authority, and the Hearings Official failed to support his decision with substantial evidence in the record.

Respectfully,

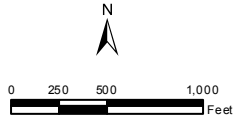


Andrew Mulkey
Attorney at Law
On behalf of LandWatch Lane County



Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

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Vicinity Map PA17-05553

Lane County, Oregon