

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

Order No. 12-10-31-05

) In the Matter of Electing Whether or Not to Hear
) Arguments on an Appeal of a Hearings Official's Decision
) upon second remand, limited to review of the septic system
) capability, for a Group Care Home (file PA 09-5314/Teen
) Challenge)

WHEREAS, the Lane County Hearings Official has made a decision, denying upon a second remand, the septic system capability 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 the second remand application PA 9-5314; 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)(i) provides the option that the appellant can request the Board 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:

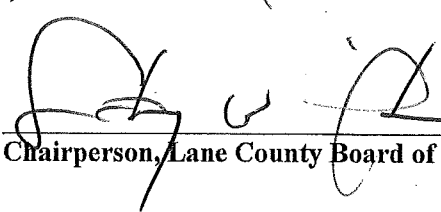
1. That the appeal does not comply with the criteria of Lane Code Chapter 14.600(3) and arguments on the appeal should therefore not be considered. Findings in support of this decision are attached as Exhibit "A"
2. That the Lane County Hearings Official decision dated April 25, 2012, attached as Exhibit "B", is affirmed and adopted by the Board of County Commissioners as the County's final decision. The Board of County Commissioners chooses to remain silent as to any interpretations of implementing ordinances, including Lane Code Chapter 16.290(5)(c), made by the Hearings Official in the decision.

DATED this 31st day of October, 2012

APPROVED AS TO FORM

Date 10/21/12 lane county

OFFICE OF LEGAL COUNSEL


Chairperson, Lane County Board of Commissioners

**LANE COUNTY HEARINGS OFFICIAL
DECISION ON THE REMAND OF THE APPROVAL 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) 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) on March 19, 2009. The application was deemed complete on April 19, 2009, and denied by the Lane County Planning Director on October 19, 2009. A timely appeal to the Lane County Hearings Official was filed by the applicant.

The Hearings Official reversed the Planning Director on January 26, 2010. The Phillips and Freemans appealed this decision to the Oregon Land Use Board of Appeals (LUBA). On September 20, 2010, LUBA remanded the case to Lane County.¹ The remand was limited to the issue of whether the subject property had the ability to accommodate the increase in septic effluent from the proposed use should the primary septic tank drain field fail. Specifically, the remand found that the record contained insufficient factual data to support a conclusion that the mandate of LC 16.290(5)(c), that the proposal "...not exceed the carrying capacity of the soil." A remanded decision was issued by this Hearings Official on April 4, 2011 and this decision was subsequently remanded by LUBA on November 30, 2011.²

Second Remand History

Remand Hearing Date: March 1, 2012
(Record Held Open Until April 5, 2012)

Remand Decision Date: April 25, 2012

Second Remand 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 16.290(5)(c)

¹ *Phillips v. Lane County*, 62 Or LUBA 92 (2010)

² *Freedman v. Lane County*, ___ Or LUBA ___, LUBA No. 2011-055 (November 30, 2011)

Findings of Fact

1. As an aid in the framing of the issues to be addressed by this remand, the following is a summary of pertinent information regarding the proposed group care home that is subject to the applicant's special use permit application:

The applicant is Teen Challenge International Pacific Northwest Centers (Teen Challenge) that operates residential facilities for recovery from drug and alcohol addiction. The property subject to this special use permit 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 group care home is called Hanna House and is intended to serve as a recovery facility/environment for recovering female drug and alcohol abusers. The requested permit would allow up to 20 individuals (women and dependent children), plus seven full-time workers, three of which would remain on-site overnight. Twenty beds have been allocated for the women and their children and three for staff.³ The group care home will provide meals for the women and their children when they are on site (e.g., not at school or at work).

2. Findings of fact from the January 26, 2010 and the April 4, 2011 Hearings Official decisions are incorporated into this decision by reference except where explicitly modified.
3. The purpose of Source Water Assessment Report (SWAR) is to provide property owners, that have or are contemplating the establishment of a public drinking water system, with information about potential water quality threats and about how to protect their water supply. The SWAR establishes an "Outreach Area" of a 500' radius around a well. This area is not based upon the soils, geology, rainfall, or other factors associated with the target property but rather is based upon the theoretical distance that a virus in groundwater might travel over a two-year period under a worst-case hydrogeologic condition such as the presence of loose, open gravel. The two-year period is very conservative compared to DEQ's requirement that wells need only be a minimum distance of 100' from a drainfield.

In the present case, the applicant's well is about 255' from its drainfield. The drainfield is down-gradient from the well so that effluent should drain away from that facility. The highly permeable soils (Chehulpum Silt) described in the SWAR are located up hill from the well while the soils (Hazelaire Silty Clay Loam) located between the well and the drainfield have a low permeability.⁴ In addition, there is no water table observed at the level close to the bottom of the drainfield disposal trenches. Consistent with this latter observation, the drainfield and replacement drainfield are located above a confined

³ November 18, 2010 letter from Michael Reeder to George Ehlers.

⁴ See the Table on page 10 of the SWAR and the testimony of Zan Ewing regarding his January 2011 inspection of 10 test holes on the subject property.

aquifer, which is where there is an impermeable thickness of material between the surface and the point at which water is encountered. The conclusion section of the SWAR correctly identifies the aquifer as “a confined Fisher and Eugene formation marine sandstone and siltstone aquifer” and this conclusion is supported by 43 logs of wells in the area that show that the static water level is above the point at which water is first found. Poorly permeable and restrictive aquifers have a low potential for widespread contamination from a point source (e.g. drainfield).

At the time the SWAR was completed for the subject property, there was no concrete slab around the well head. In addition, the presence of a well seal could not be verified by any well log that was identified for the site. These two reasons are predominate in the identification of the aquifer as being “highly sensitive.” Subsequently, a concrete floor has been placed around the well head. The well casing and seal cannot be readily inspected to determine their present condition. However, the City of Springfield has municipal wells older than the well on the subject property (1979) as are thousands of public and private wells across the state. Failure of a well seal is uncommon but can be repaired or replaced. This situation affects the functionality of the well not the carrying capacity of the subject property.

4. Table 1 compares the results of the three “grab samples” taken from Hanna House effluent with the DEQ standard for residential strength waste found in OAR 340-071-0100(126).

Table 1 – Grab Sample Results

Effluent Component	12/15/11 Sample	1/4/12 Sample	1/26/12 Sample	DEQ Standard
BOD	195 mg/L	199 mg/L	230 mg/L	300 mg/L
TSS	39 mg/L	31 mg/L	27 mg/L	150 mg/L
Total Nitrogen	43.2 mg/L	27.4 mg/L	31.2 mg/L	150 mg/L
FOG	22.6 mg/L	29.6 mg/L	20.3 mg/L	25 mg/L

5. It cannot be said with certainty that Hanna House, at full build-out, will produce residential strength effluent waste as defined by the DEQ. The applicant’s expert honestly testified that while “no one knows what will happen once the site is expanded” his experience tells him that Hanna House will produce residential strength wastewater. The appellants’ expert, Mr. Smits, testified that he “absolutely” believes that an expanded Hanna House will discharge greater than residential strength wastewater. As an example, he cites a “similar facility” for 20 adolescent boys and support staff, where a greater than residential strength wastewater was due to high fats, oil and grease (FOG). Mr. Smits would not identify the facility and he did not know pertinent specific characteristics of the facility, such as the daily, on-site activities of the boys or whether the facility had a commercial-grade kitchen that might, on occasion, serve a greater population.

Regardless, the January 4, 2012 “grab” sample taken from Hanna House exceeded DEQ standards for FOG. It is unclear whether the pumping of the septic tanks three weeks prior caused this result.⁵

6. The applicant’s expert has suggested that an Orenco AdvanTex wastewater filter treatment system will be available to reduce the size of the replacement drainfield. The typical average influent wastewater strength for this system for BOD is 150 mg/L. The typical weekly peak for this wastewater component is 250 mg/L. The typical average influent wastewater strength for this system for oil and grease is 20 mg/L and the typical weekly peak for this wastewater component is 25 mg/L. Specifications for the AdvanTex system indicate that the oil and grease component should rarely exceed 30 mg/L.

Decision

THE HEARING OFFICIAL’S APPROVAL 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.

Justification for Decision (Conclusion)

In its November 11, 2011 remand, LUBA found that the findings of fact in the April 4, 2011 Lane County Hearings Official decision (PA 09-5314) were lacking in two respects. First, the Board ordered that the County determine whether the effluent from Hanna House can be expected to qualify as Residential Strength Wastewater, allowing it to install a pressurized sand filter system, resulting in a smaller replacement drainfield. If the wastewater is found not to so qualify then it must be reconsidered whether there is sufficient area for the replacement drainfield.

Second, it must be determined whether the concerns expressed in the Source Water Report are sufficient to make the proposal to site the expanded and replacement drain fields inconsistent with the LC 16.290(5)(c) carrying capacity standard.

Question #1: Will the effluent from Hanna House typically be of residential strength and, if not, is there sufficient area on the subject property to locate an adequate replacement drainfield?

Residential Strength Wastewater

I do not believe that any of the professionals can say with certainty that Hanna House, at full build-out, will produce residential strength effluent waste as defined by the DEQ. The applicant’s expert honestly testified that while “no one knows what will happen once the site is expanded” his experience tells him that Hanna House will produce residential strength wastewater. The appellant’s expert, Mr. Smits, testified that he “absolutely” believes that an

⁵ The December 15, 2011 and the January 26, 2012 grab samples were at 81% and 90%, respectively, of the DEQ threshold for residential strength FOG.

expanded Hanna House will discharge greater than residential strength wastewater. As an example, he cites a "similar facility" for 20 adolescent boys and support staff, where a greater than residential strength wastewater was due to high fats, oil and grease (FOG). Relying upon this example is dangerous, however, as Mr. Smits would not identify the facility and he did not know pertinent specific characteristics of the facility, such as the daily, on-site activities of the boys or whether the facility had a commercial-grade kitchen that might, on occasion, serve a greater population.

It seems to me that the best possibility to compare septic apples to septic apples would have been to take grab samples of wastewater from the Graham Women's Center, which if I understood correctly, is similar in number of women and activity to that of Hanna House at expected build-out. While the treatment system there has been designed for a wetland environment, a comparison of the influent⁶ strength from that facility with the influent strength of the current Hanna House operation might have more relevancy, at least in demonstrating how well the number of occupants correlates to wastewater strength.

The most relevant evidence appears to be the three grab samples taken from Hanna House effluent over a period of about 45 days. These samples were taken in the late afternoon and around noon-time. Apparently, DEQ grab sample guidelines require that samples be taken between 50-90 days after pumping of the septic tank and that the sampling should be taken at peak usage time of the system. It is unclear how significant it is to follow this procedure but it can be presumed that it is required for DEQ permit-related testing.

If I understood the testimony from the sanitation experts, which on occasion I did not, there isn't a one-to-one relationship between the number of people and the amount of BOD and other residential strength characteristics of effluent. Rather, the more the people the greater the likelihood of an increased use of detergents, soaps and other chemicals associated with additional meal preparation, clothes washing and showering. The more women present also can be correlated to the number of guests who might visit on a weekly basis. The January 4, 2012 "grab" sample taken from Hanna House exceeded DEQ standards for FOG and the sample taken on January 26, 2012 showed a BOD that was slightly over 76 percent of its DEQ standard. While the cause of these readings can be debated, their evidentiary import must be enhanced by the fact that all of the samples were taken at a time when only a few women and staff were present.

Based upon standard practice in Lane County, the Hanna House subsurface wastewater system would be approved by the County under the assumption that its effluent would be of residential strength. Later, if that turned out not to be the case, no one would know unless the septic tanks backed up or the drainfield failed. If a DEQ permit was then required it is likely that, based on common practice, that DEQ staff would work with the applicant to correct the situation. The applicant's expert recommends that, because there is no documented operational issue or maintenance problem with the Hanna House wastewater system and because the drainfield is oversized for the previous and current use, the special use permit should be conditionally issued. That is, the permit should be approved with a condition of periodic testing whereby the applicant would apply for a DEQ WPCF permit if DEQ's residential strength parameters were exceeded in

⁶ In this context, I believe that "influent," refers to sewage wastewater prior to its entry into a treatment system.

two consecutive tests. This solution, however, begs the question of whether it can be concluded that the proposed development will not exceed the carrying capacity standard of Lane Code 16.290(5)(c). To say that a subsurface sewage system can be corrected once it violates a standard is different than saying that the system will not exceed that standard.

To a large extent, the residential strength of effluent is determined by the daily activities and habits of the people who create the effluent as much as it is by their number. In the present case, the latter is known but not the former. Absent effluent samples from a facility that is truly similar in number and activity to Hanna House at build out, it is impossible to confidently predict whether the three grab samples are indicative of the eventual effluent strength of the latter facility. The burden of proof lies with the applicant and a conclusion that the effluent from Hanna House, at build-out, will typically be of residential strength is not supported by a preponderance of the evidence in this record.

Adequacy of a replacement drainfield

The appellants argue that the question of whether there is adequate room for a replacement drainfield cannot be answered until DEQ review's the applicant's application for a permit. They further suggest that it is unreasonable for the applicant to rely upon the Orenco AdvanTex pretreatment system to treat non-residential strength effluent and reduce the size of the replacement drainfield.

There is a significant question in my mind as to whether the AdvanTex system can be relied upon in situations where non-residential strength wastewater is typical or even during short durations of overloading. For instance, Tristian Bounds, a professional engineer with Orenco Systems, Inc., suggested that three grab samples of effluent is a small sample pool and that influent characteristics of the wastewater would also be helpful in determining whether the AdvanTex system would be suitable for a particular use. Further, the grab sample results from Hanna House wastewater effluent exceeded Orenco daily average guidelines for successful operation of an AdvanTex system in regard to two factors. First, Orenco suggests that the average BOD not be greater than 150 mg/l and the three grab samples exceeded this parameter. Orenco guidelines also suggest that the weekly average not exceed 250 mg/l and the January 26, 2012 sample was close to this figure. Second, Orenco suggests that the average oil and grease level not exceed 20 mg/l and the three grab samples exceeded this parameter. The average weekly guideline of 25 mg/l was exceeded by the January 4, 2012 sample which also was very close to the 30 mg/l level of oil and grease that should be rarely exceeded.

The above-identified statistics lead me to believe that there are serious questions as to whether the AdvanTex system would be adequate to treat Hanna House effluent under full build-out conditions. Statements from the appellant's expert suggest that if greater than residential strength effluent is typical then the AdvanTex system would require its own pre-treatment system. The record is silent about the necessity or the size and practicality of these systems as applied to the subject property.

Given the diligence with which the appellants have applied to their appeal of this special use permit, I would suggest that it is naive to assume that the acquisition of a DEQ permit, with the

proposed pre-treatment system, will be as straightforward as commonly experienced by the applicant's expert. The appellant's expert suggests that the best evidence of switching from a county permit to DEQ permit is a letter from DEQ indicating that such a permit could be issued. The implication that such a letter might be possible at this stage of the proceedings was not rebutted.

Based upon the record in this manner, I must conclude that at this stage of the proceedings it is not possible to conclude that DEQ will approve a permit application for an alternative pre-treatment system as proposed by the applicant. Until the applicant has an approved DEQ permit in hand; one that includes provisions for a complete primary and replacement subsurface sewage treatment system on the subject property, the dimensions of that system cannot be known and therefore it cannot be assumed that the sewage carrying capacity standard of Lane Code 16.290(5)(c) will be met or that is feasible that it can be met.

Question #2: Are the concerns expressed in the Source Water Assessment Report sufficient to make the proposal to site the expanded and replacement drain fields inconsistent with the LC 16.290(5)(c) carrying capacity standard?

The purpose of Source Water Assessment Reports (SWARs) is to provide property owners that have or are contemplating establishing a public drinking water system with information about potential water quality threats and about how to be protective of their water supply. The SWAR establishes an "Outreach Area" of a 500' radius around a well. This area is not based upon the soils, geology, rainfall, or other factors associated with the target property but rather is based upon the theoretical distance that a virus in groundwater might travel over a two-year period under a worst-case hydrogeologic condition such as the presence of loose, open gravel. The two-year period is very conservative compared to DEQ's requirement that wells need only be a minimum distance of 100' from a drainfield.

In the present case, the applicant's well is about 250' from its drainfield. The drainfield is down-gradient from the well so that effluent should drain away from that facility. The highly permeable soils described in the SWAR are located up hill from the well while the soils located between the well and the drainfield have a low permeability. (See the Table on page 10 of the SWAR.) Finally, the drainfield and replacement drainfield are located above a confined aquifer. A confined aquifer is where there is an impermeable thickness of material between the surface and the point at which water is encountered. Poorly permeable and restrictive aquifers have a low potential for widespread contamination from a point source (e.g. drainfield).

At the time the SWAR was completed for the subject property, there was no concrete slab around the well head. In addition, the presence of a well seal could not be verified by a well log that was identified for the site. These two reasons are predominate in the identification of the aquifer as being "highly sensitive." Subsequently, a concrete slab has been placed around the well head.

Since the drainfield system on the subject property will not contaminate its well it is unlikely, for the same reason, that it will contaminate other wells in the area. The aquifer is confined, which means it is poorly permeable and restrictive and has a low potential for widespread


contamination from a point source. Many of the dwellings in the area have less than 500 feet of separation between their drainfield and their well or other wells and no widespread contamination has been observed. Finally, the well head on the subject property has been protected with a concrete floor and the major reason for the SWAR to identify the aquifer as "highly sensitive" is therefore no longer valid.

For the reasons discussed above, I believe that the concerns expressed in the SWAR are not applicable to the current arrangement of the well and the proposed primary and replacement drainfield and do not connote an inconsistency with the LC 16.290(5)(c) carrying capacity standard.

Conclusion

This decision is largely determined by who carries the burden of proof in regard to effluent strength. Initially, a conclusion that Hanna House, at full build-out, will generate residential strength effluent is not supported by a preponderance of the evidence. In addition, there are enough unanswered questions about whether the applicant's pre-treatment alternative will adequately function in non-residential or borderline residential strength effluent conditions that it cannot be determined that it is an alternative that, as proposed, DEQ would approve. Despite the applicant's expert's valiant attempt to educate the Hearings Official about DEQ's permit approval process, it is not sufficiently clear how other alternative pre-treatment systems would affect the dimensions of a required drainfield system. In conclusion, I cannot find that there is an adequate amount of usable land on the subject property for the Hanna House subsurface sewage disposal system without a final, approved DEQ permit. And without an approved DEQ permit I cannot conclude that the application satisfies the provisions of Lane Code 16.290(5)(c).

Respectfully Submitted,


Gary Darnielle
Lane County Hearing Official

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. On February 8, 2010, a timely appeal of the Hearings Official's decision was filed.
8. On February 16, 2010, and after reviewing the appeal, the Hearings Official affirmed his decision of January 26.
9. On March 17, 2010, the Board adopted Order No. 10-3-17-14 electing not to conduct a hearing on the appeal.
10. Opponents of the proposal, Pat Phillips, Al Phillips, Robbin Freedman, and Matt Freedman, subsequently appealed the decision of January 26, 2010 to the Oregon Land Use Board of Appeals (LUBA No. 2010-025). They cited five assignments of error.
11. On September 20, 2010, LUBA issued its decision, dismissing four of the five assignments of error. The second portion of the fifth assignment of error, specific to the issue of whether the subject property had the ability to accommodate the increase in septic effluent from the proposed use should the primary septic tank drain field fail, was sustained and remanded back to the County for further action.

12. On December 15, 2010, via Order No. 10-12-15-10, the Lane County Board of Commissioners remanded the matter back to the Lane County Hearings Official for further proceedings and action consistent with the remand.
13. On January 20, 2011, the Hearings Official conducted a limited evidentiary hearing upon the remand. The record closed on March 14, 2011, and the decision was approved on April 7, 2011.
14. On April 19, 2011, a timely appeal of the April 7 decision was filed by the opponents, Pat Phillips, Al Phillips, Robbin Freedman, and Matt Freedman.
15. The Planning Director accepted the appeal, and forwarded it to the Hearings Official for his review. On April 25, 2011, the Hearings Official affirmed his decision of April 7, 2011.
16. On May 18, 2011, the Board adopted Order No. 11-5-18-4 electing not to conduct an on the record hearing on the appeal.
17. Opponents of the proposal, Pat Phillips, Al Phillips, Robbin Freedman, and Matt Freedman, subsequently appealed the decision of April 7, 2011 to the Oregon Land Use Board of Appeals (LUBA No. 2011-055). They cited four assignments of error.
18. On November 30, 2011, LUBA issued its decision, sustaining the first assignment of error, and the third and fourth in part. LUBA found that upon remand, the county must first determine whether the facility's wastewater could be expected to qualify as Residential Strength Wastewater, which would make it possible for Teen Challenge to install a pressurized sand filtration system, so that a smaller replacement drain field could be used. If the wastewater did not qualify as Residential Strength Wastewater, the county was to reconsider whether sufficient area for the replacement drain field exists. Last, that the county would need to consider if the concerns expressed in the Source Water Report are sufficient to make the proposal to site the expanded and replacement drain fields inconsistent with the carrying capacity standard of LC 16.290(5)(c).
19. On February 2, 2012, via Order No. 12-8-8-4, the Lane County Board of Commissioners remanded the matter back to the Lane County Hearings Official for further proceedings and action consistent with the remand.
20. On March 1, 2012, the Hearings Official conducted a limited evidentiary hearing upon the remand. The record closed on April 4, 2012, and the proposal was denied on April 25, 2012. The Hearings Official found that the evidence in the record addressed the concerns of the Source Water Report, but found the record deficient in regards to proving that the effluent from the proposed facility would be of Residential Strength and that failing such, that there was sufficient area for a replacement area.
21. On May 7, 2012, a timely appeal of the April 25, 2012 decision was filed by the applicant, Teen Challenge International, Pacific Northwest Centers. The applicant asked for the Hearings Official to reconsider his decision.

22. The Planning Director accepted the appeal, and forwarded it to the Hearings Official for his review. On May 15, 2012, the Hearings Official agreed to reconsider his decision of April 25, 2012, and to allow limited additional materials into the record.
23. During the reconsideration process, the applicant and appellant had agreed upon a protocol for testing whether or not the proposed facility produced a Residential Strength level of wastewater. On September 8, 2012, the applicant informed the Hearings Official that sewage sampling at a similar facility in Graham, Washington could not be conducted in a timely manner, and asked the Hearings Official to render a decision.
24. On September 20, 2012, the Hearings Official rendered his decision, denying the proposal.
25. On October 2, 2012, the applicant filed a timely appeal of the September 20, 2012 decision.
26. The Planning Director accepted the appeal, and forwarded it to the Hearings Official for his review. On October 3, 2012, the Hearings Official reaffirmed his decision of April 25, 2012.
27. The appeal states that the Approval Authority exceeded his jurisdiction and misinterpreted Lane Code 16.290(5)(c).
28. 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.*
29. The Board of Commissioners finds that the issue upon remand is specifically limited to the subject property's ability to accommodate a septic system and replacement area that will adequately service the proposed group care home. These sanitation issues are driven largely by soil types, topographic features, and parcel size, which are specific to the subject property, and therefore are site specific and not of Countywide significance.
30. The Board of Commissioners finds that the issue of septic system capability for a group care home on a specific parcel of land with localized soil types, topographic conditions, and parcel size is not likely to occur with frequency, and there is no need for policy guidance if the Board affirms the Hearings Official's decision.
31. The Board of Commissioners finds that tax lot 224 is a 5.4-acre developed residential parcel which is not a unique environmental resource.
32. Neither the Planning Director nor the Hearings Official recommends review of the appeal.

33. 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.
34. The Board has reviewed this matter at its meeting of October 31, 2012, 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.
35. The Board chooses to remain silent as to any interpretation of implementing ordinance, LC 16.290(5)(c) made by the Hearings Official, and adopts the Hearings Official's decision of April 25, 2012, as the County's final decision in this matter.