

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 16-12-06-08 IN THE MATTER OF ELECTING WHETHER OR NOT TO HEAR AN APPEAL OF A HEARINGS OFFICIAL DECISION APPROVING A LEGAL LOT VERIFICATION AND NOTICE FOR TWO PARCELS IDENTIFIED AS ASSESSOR'S MAP AND TAX LOTS 17-06-10-00-02402 AND 02403; (File No. 509-PA16-05596/Swanson).

WHEREAS, the Lane County Hearings Official has made a determination approving a Legal Lot Verification and Notice for two parcels identified as Assessor's Map and Tax Lots 17-06-10-00-02402 and 02403, pursuant to Lane Code 13.450, 13.010, and 13.020, in Department File No. 509-PA16-05596; 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-PA16-05596; and

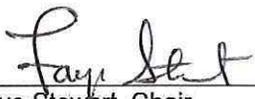
WHEREAS, Lane Code 14.600 provides the procedure and criteria that the Board follows in deciding whether or not to conduct an on the record hearing for an appeal of a decision by the Hearings Official; and

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

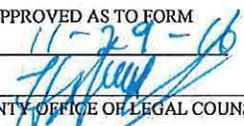
NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDERS** as follows:

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 October 24, 2016, and the letter affirming the decision dated November 9, 2016, 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 13.450, 13.010, and 13.020 made by the Hearings Official in the decision.

ADOPTED this 6th day of December, 2016.



Faye Stewart, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM
Date 11-29-16


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," can be identified as tax lots 2402 and 2403, assessor's map 17-06-10. The subject property is owned by the Swanson Bro. Lumber Co. and is zoned F-2 Impacted Forest Lands. The subject property was first zoned AGT-5 in August of 1976 and in 1984 it was zoned F-2 Impacted Forest Lands.
2. Tax lot 2402, also identified as Legal Lot 1 in this matter, was created on February 19, 1963 in a Warranty Deed from Sweet to Hickey. This deed was recorded on Reel 212, Instrument 1045 Land County Deeds & Records.
3. Tax lot 2403, also identified as Legal Lot 2 in this matter, was created on November 13, 1964 in a Warranty Deed from Sweet to Hickey. This deed was recorded on Reel 464, Instrument 91380 Land County Deeds & Records.
4. On December 19, 1969, tax lots 2402 and 2403 were deeded to Vincent and Joan Kycek. This deed specifically called out the separate legal descriptions of the two tax lots. (See Reel 464, Instrument 91379 Lane County Deeds and Records.)
5. On December 1, 1997, Vincent and Joan Kycek, transferred tax lots 2402 and 2403 by warranty deed to the Kycek Living Trust. This warranty deed specifically called out the separate legal descriptions of the two tax lots. (See Reel 2362, Instrument 9781828 Lane County Deeds and Records.)
6. On February 26, 2015, the Kycek Living Trust transferred tax lots 2402 and 2403 by warranty deed to the Applicant. Exhibit A to that deed was the separate legal descriptions of the two tax lots. (This deed was recorded with the Lane County Deeds and Records on March 2, 2015. See Number 2015-008160.)
7. On September 19, 1984, the Lane County Land Management Division found that tax lots 2402 and 2403 qualified for a Lot of Record dwelling (PA 85-1492). Building Permit BP 85-01492 approved the placement of a manufactured dwelling on tax lot 2402 based upon this lot of record determination.
8. The September 19, 1984 Lot of Record determination was based on the Warranty Deed recorded on Reel 464, Instrument 91379, which conveyed tax lots 2402 and 2403 to Vincent and Joan Kycek on December 19, 1969. The 1969 warranty deed included a legal description of both tax lots. Both lots were subsequently transferred in a single deed in 1997 and in 2015.
9. Sections 9 through 13, Chapter 884, Oregon Laws 1981 added the Lot of Record provisions to the Oregon Revised Statutes. The law provided that only one lot of record would exist among contiguous parcels or lots of same ownership although it did not require the consolidation of those parcels or lots. LCDC administrative rules for Forest Lands that were in effect in 1984 (LCDC 8-1982, ef. 9-1-82) did not contain Lot of Record language.
10. The Lane County Lot of Record regulations that existed in 1984 also provided that only one Lot of Record would exist among contiguous parcels or lots of same ownership and it also did not require the consolidation of those parcels or lots. The 1984 Lot of Record approval determined that since tax lots 2402 and 2403 were contiguous tax lots under the same ownership, the total ownership constituted one legal lot and only one Lot of Record.

This determination was not based upon Lot of Record provisions but rather on the County's opinion that adjacent lots under common ownership were merged for development purposes.

11. Oregon Administrative Rule (OAR) 660-006-0027(1) currently provides that a Lot of Record dwelling authorized under ORS 215.705 may be allowed if: *"(g) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel when the dwelling is allowed."*
12. Oregon Revised Statute (ORS) 215.705(1) currently provides: *"A governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a farm or forest zone as set forth in this section and ORS 215.710, 215.720, 215.740 and 215.750 after notifying the county assessor that the governing body intends to allow the dwelling. A dwelling under this section may be allowed if: (g) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed."*
13. Lane Code 16.211(6) currently reads: *"Lot of Record Dwelling. One single family dwelling is allowed subject to prior submittal of an application pursuant to LC 14.050, approval of the application pursuant to LC 14.100 with the options for the Director to conduct a hearing or to provide written notice of the decision and an opportunity for appeal, and compliance with the general provisions and exceptions in LC Chapter 16, LC 16.211(6)(a) through (j) and LC 16.211(8) below.*

(g) If the lot or parcel where the dwelling will be located is part of a tract, then prior to land use clearance of the permit for the dwelling on this tract, the tract shall be consolidated into a single lot or parcel."
14. ORS 92.017, which provides *"A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law"* did not become effective until 1985.
15. On July 18, 2016, a request for a Director review of a Legal Lot Verification and Notice was submitted to the Land Management Division. The application was reviewed and accepted as complete on August 8, 2016. On August 10, 2016, the application was approved, finding that two legal lots exist. Notice of the determination was mailed to surrounding property owners. On August 22, 2016, a timely appeal was submitted by Lauri Segel, on behalf of LandWatch Lane County and Robert Emmons.
16. On October 6, 2016, the Lane County Hearings Official conducted a public hearing. The record was held open until October 20, 2016. On October 24, 2016, the Lane County Hearings Official issued a decision approving the application. Notice of the Hearings Official's decision was mailed to the applicant and all parties of record on October 24, 2016.
17. On November 7, 2016, Lauri Segel filed a timely appeal on behalf of LandWatch Lane County (LWLC), Robert Emmons, and William Dunham, and requested 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).
18. On November 9, 2016, the Hearings Official reviewed the appeal and affirmed his decision without further consideration pursuant to LC 14.535(1).
19. 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.*

20. The Board finds that the issues raised in this appeal are not of countywide significance. The primary issue in this appeal involves a narrow set of circumstances, namely, a 1984 Lot of Record approval, on multiple legal lots, that did not explicitly require parcel consolidation as a condition of approval. While legal lot verification applications are common, those that involve Lot of Record approvals that predate statutory lot consolidation requirements are rare. The Hearings Official's decision presents a reasonable interpretation of Lane Code 13.450, 13.010, and 13.020 that is consistent with the Land Management Division's past practice. Additionally, the Hearings Official's decision includes a reasonable interpretation of the implications of the 1984 Lot of Record approval for the legal lot status of the two subject parcels.
21. The Board finds that the issues involved in this appeal will not reoccur with frequency and that there is not a need for further policy guidance. The primary issue in this appeal involves a narrow set of circumstances. While legal lot verification applications are common, those that involve Lot of Record approvals that predate statutory lot consolidation requirements are rare. The Hearings Official's decision presents a reasonable interpretation of Lane Code 13.450, 13.010, and 13.020 that is consistent with the Land Management Division's past practice. Additionally, the Hearings Official's decision includes a reasonable interpretation of the implications of the 1984 Lot of Record approval for the legal lot status of the two subject parcels. If these issues arise in the future, the Hearings Official's decision provides sufficient guidance.
22. 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.
23. The Planning Director does not recommend review of the appeal on the record for the reasons cited above.
24. 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.
25. The Board has reviewed this matter at its meeting on December 6, 2016, 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.
26. The Board affirms and adopts the Lane County Hearings Official decision dated October 24, 2016, the letter affirming the decision dated November 9, 2016, as the County's final decision in this matter, and expressly agrees with and adopts the interpretations of Lane Code 13.450, 13.010, and 13.020, and of the implications of the 1984 Lot of Record approval for the legal lot status of the two subject parcels made by the Hearings Official in the decision.



November 9, 2016

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

Re: Appeal of Hearings Official decision affirming the Planning Director's approval of the Swanson Brothers' request (PA 16-05596) for the legal lot verification and notice of tax lots 2402 and 2403, assessor's map 17-06-10.

Dear Ms. McKinney:

On October 24, 2016, I affirmed the Planning Director's approval of the Swanson's Brothers request (PA 16-05596) for the legal lot verification and notice of tax lots 2402 and 2403, assessor's map 17-06-10. On November 7, 2016 LandWatch Lane County appealed my decision. 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 October 24, 2016 decision without further consideration. Please advise interested parties of this decision.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gary L. Darnielle", is written over the typed name.

Gary L. Darnielle
Lane County Hearings Official

cc: Rafael Sebba (file)