

W.9.a.

AGENDA COVER MEMO

DATE: March 30, 2009 (Date of Memo)
April 15, 2009 (Date of Meeting)

TO: Lane County Board of Commissioners

DEPT.: Public Works Department

PRESENTED BY: Jerry Kendall, Land Management Division

AGENDA ITEM TITLE: Order No. _____ / In the Matter of Electing Whether or Not to Hear Arguments on an Appeal of a Hearings Official's Decision affirming the Planning Director's approval of a Forest Template Dwelling (file PA 08-5840/Cowan)

I. MOTION

MOVE TO ADOPT THE ORDER ESTABLISHING THE BOARD'S ELECTION TO NOT HEAR ARGUMENTS IN AN APPEAL OF THE HEARINGS OFFICIAL'S DECISION AND TO AFFIRM THE HEARINGS OFFICIAL'S INTERPRETATION OF LANE CODE AND THE LANE COUNTY RURAL COMPREHENSIVE PLAN ON THE RECORD.

II. ISSUE OR PROBLEM

The Director has received an appeal to the Board, contesting a Hearings Official affirmation of the Planning Director's approval of a Forest Template Dwelling in the F-2 zone. Pursuant to Lane Code 14.600, the Board must now decide whether or not to hear the appeal by applying criteria set forth in the Code.

III. DISCUSSION

A. Background

1. Property involved in this action is identified as tax lot 201, map 20-02-33, located on the north side of Dorena Lake, approximately 4 miles east of Cottage Grove. Total parcel size is 15.9 acres. The property is designated as Impacted Forest Lands, F-2, LC 16.211.

2. In the form of application PA 08-5840, the property owner, in June 2008, requested the Planning Director approve a request for a dwelling in the Impacted Forest Lands (F-2) Zone, per LC 16.211(5) & (8). The approval was granted on October 24, 2008.
3. A timely appeal was filed by a neighboring landowner, and an appeal hearing before the Lane County Hearings Official was held on December 4, 2008. The record was held open for additional submittals until December 29, 2008.
4. On February 18, 2009, the Hearings Official issued a decision, affirming the Planning Director's decision and approving the proposal.
5. The appellant filed a timely appeal of the Hearings Official decision on March 2, 2009; the appeal was accepted by the Director and forwarded to the Hearings Official.
6. On March 4, 2009, the Hearings Official affirmed his decision.

B. Elective Board Review Procedure

The Elective Board Review Procedure in Lane Code 14.600(2)(c) and (d) provides the Board with three options:

- To hear the appeal on-the-record,
- To not hear the appeal and to remain silent on the Hearings Official's decision, or
- To not hear argument in the appeal but to expressly agree with any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed and affirm the Hearings Official's decision.

The applicable subsections are:

(c) The Board shall specify whether or not the decision of the Board is to have a hearing on the record for the appeal and shall include findings addressing the decision criteria in LC 14.600(3) below. If the Board's decision is to have a hearing on the record for the appeal, the Board order shall also specify the tentative date for the hearing on the record for the appeal and shall specify the parties who qualify to participate in the hearing on the record for the appeal.

(d) If the decision of the Board is to not have a hearing, the Board order shall specify whether or not the Board expressly agrees with or is silent regarding any interpretations of the comprehensive plan policies or implementing ordinances made by the Hearings Official in the decision being appealed. The Board order shall affirm the Hearings Official decision.

If the Board's decision is to hear arguments on the appeal, then the Board must adopt an Order and findings specifying the tentative date for a hearing and the parties who

qualify to participate in a hearing on the record for the appeal. Such an Order is not attached here and will need to be produced if the Board elects to hear.

In order for the Board to hear the appeal, the Decision Criteria of LC 14.600(3) requires that one or more of the four criteria cited below, be satisfied:

(3) Decision Criteria. A decision by the Board to hear the appeal on the record must conclude the issue raised in the appeal to the Board could have been and was raised before the close of the record at or following the final evidentiary hearing and must comply with one or more of the following criteria:

- a) The issue is of Countywide significance.***
- b) The issue will reoccur with frequency and there is a need for policy guidance.***
- c) The issue involves a unique environmental resource.***
- d) The Planning Director or Hearings Official recommends review.***

C. Analysis

Character of the Appeal.

The appeal was received in three sections over a period of days. The original, timely appeal consists of the appeal form and two letters dated February 28, 2009. This section was received on March 2, 2009, the appeal deadline.

The second section consists of a letter dated March 2, 2009, accompanied by a yellow-highlighted copy of the Hearing Official's decision. This second section of the appeal was received on March 3, 2009, beyond the appeal deadline.

The third section consists of a letter dated March 4, 2009, and was received on March 5, 2009, also beyond the appeal deadline.

Although copies of the second and third sections were provided to the Hearings Official, they were not considered by him in affirming his decision of October 24, 2008, as both sections were received after the appeal deadline. These two sections also contain new testimony added after the close of the record on December 29, 2008. Whereas the letters were submitted late and that they contain new evidence, they are not analyzed in this memo. However, they are included so as to present the appeal to the Board in its entirety.

Gaining a dwelling approval under the "template test" requires meeting two sections of the F-2 ordinance. The first section, LC 16.211(5) was not challenged in the appeal. It concerns the number of qualifying parcels in the "template count", restocking, and four year length of the approval.

The second section, LC 16.211(8), is the subject of the appeal filed March 2, 2009. Basically stated, while the outcome under LC 16.211(5) determines if a dwelling can be placed, LC 16.211(8) are the siting standards that determine *where* the dwelling will be located within the subject parcel.

The portions of LC 16.211(8) that were challenged read as follows:

(8) Siting Standards for Dwellings, Structures and Other Uses. The following siting standards shall apply to all new dwellings, manufactured dwellings and structures, and other uses as specified above in LC 16.211(2)(h) and (j), and in LC 16.211(3) through (7) above. These standards are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. The standards in LC 16.211(8)(a)-through(b) below shall be weighed together with the requirements in LC 16.211(8)(c) and (e) below to identify the building site.

(a) Setbacks. Residences, Dwellings or manufactured dwellings and structures shall be sited as follows:

(i) Near dwellings or manufactured dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or slope greater than 40 percent;

(ii) With minimal intrusion into forest areas undeveloped by non-forest uses; and

(iii) Where possible, when considering LC 16.211(8)(a)(i) and (ii) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and 100 and at least 30 feet from the adjoining lines of property zoned F-2 or EFU;

(v) Structures other than a fence or sign shall not be located closer than:

(aa) 20 feet from the right-of-way of a state road, County road or a local access public road specified in Lane Code LC Chapter 15; and

(bb) 30 feet from all other property lines; and

(cc) The minimum distance necessary to comply with LC 16.211(8)(a) above and LC 16.211(8)(b) through (d) below

(b) The amount of forest lands used to site access roads, service corridors and structures shall be minimized.

(c) Fire Siting Standards. The following fire-siting standards or their equivalent shall apply to new residences, dwellings, manufactured dwellings or structures:

(i) Fuel-Free Breaks. The owners of dwellings, manufactured dwellings and structures shall maintain a primary safety zone surrounding all structures and clear and maintain a secondary fuel break on land surrounding the dwelling or manufactured dwelling that is owned or controlled by the owner in compliance with these requirements.

(aa) Primary Safety Zone. The primary safety zone is a fire break extending a minimum of 30 feet in all directions around dwellings, manufactured dwellings and structures. The goal within the primary safety zone is to exclude fuels that will produce flame lengths in excess of one foot. Vegetation within the primary safety zone could include green lawns and low shrubs (less than 24 inches in height). Trees shall be spaced with greater than 15 feet between the crown and pruned to remove dead and low (less than eight feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees. Nonflammable materials (i.e., rock) instead of flammable materials (i.e., bark mulch) shall be placed next to the house.

As slope increases, the primary safety zone shall increase away from the house, parallel to the slope and down the slope, as shown in the table below:

Size of the Primary Safety Zone by Percent Slope		
	Feet of Primary Safety Zone	Feet of Additional Safety Zone Down Slope
% Slope		
0	30	0
10	30	50
20	30	75
25	30	100
40	30	150

Dwellings or manufactured dwellings shall not be sited on a slope greater than 40 percent.

(bb) Secondary Fuel Break. The secondary fuel break is a fuel break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of the secondary fuel break is to reduce fuels so that the overall intensity of any wildfire would be lessened and the likelihood of crown fires and crowning is reduced. Vegetation within the secondary fuel break shall be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees

shall be removed to prevent spread of fire up into the crowns of the larger trees. Dead fuels shall be removed.

(e) Fire Safety Design Standards for Roads and Driveways. Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for fire fighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways shall comply with the standards specified below in LC 16.211(8)(e). Evidence of compliance with the standards specified in LC 16.211(8)(e) below should include objective information about the fire fighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.

(i) Road and Driveway Surfaces. Roads shall have unobstructed widths of at least 20 feet including: travel surfaces with widths of at least 16 feet constructed with gravel to a depth sufficient to provide access for fire fighting vehicles and containing gravel to a depth of at least six-inches or with paving having a crushed base equivalent to six inches of gravel, an unobstructed area two feet in width at right angles with each side of the constructed surface, curve radii of at least 50 feet, and a vertical clearance of at least 13 feet 6 inches. Driveways shall have: constructed widths of at least 12 feet with at least six inches of gravel or with paving having a crushed base equivalent to six inches of gravel and shall have a vertical clearance of 13 feet 6 inches.

(ii) Turnarounds. Any dead-end road over 200 feet in length and not maintained by Lane County shall meet these standards for turnarounds. Dead-end roads shall have turnarounds spaced at intervals of not less than 500 feet. Turnarounds shall comply with these design and construction standards:

(aa) Hammerhead Turnarounds. Hammerhead turnarounds (for emergency vehicles to drive into and back out of to reverse their direction on the road) shall intersect the road as near as possible at a 90 degree angle and extend from the road at that angle for a distance of at least 20 feet. They shall be constructed to the standards for driveways in LC 16.211(8)(e)(i) above and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; or

(bb) Cul-de-sac Turnarounds. Cul-de-sac turnarounds shall have a right-of-way width with a radius of at least 45 feet and an improved surface with a width of at least 36 feet and shall be marked and signed by the applicant as "NO PARKING." Such signs shall be of metal or wood construction with minimum dimensions of 12 inches by 12 inches; and

(cc) No cul-de-sacs or hammerhead turnarounds shall be allowed to cross any slope which will allow chimney-effect draws unless the dangerous effects of the chimney-effect draws have been mitigated by the location of the road and, where necessary, by the creation of permanent fire breaks around the road.

(iii) Bridges and Culverts. Bridges and culverts shall be constructed to sustain a minimum gross vehicle weight of 50,000 lbs. and to maintain a minimum 16-foot road width surface or a minimum 12-foot driveway surface. The Planning Director may allow a single-span bridge utilizing a converted railroad flatcar as an alternative to the road and driveway surface width requirements, subject to verification from an engineer licensed in the State of Oregon that the structure will comply with the minimum gross weight standard of 50,000 lbs.

(iv) Road and Driveway Grades. Road and driveway grades shall not exceed 16 percent except for short distances when topographic conditions make lesser grades impractical. In such instances, grades up to 20 percent may be allowed for spans not to exceed 100 feet. An applicant must submit information from a Fire Protection District or engineer licensed in the State of Oregon demonstrating that road and driveway grades in excess of eight percent are adequate for the fire fighting equipment of the agency providing fire protection to access the use, fire fighting equipment and water supply.

(v) Identification. Roads shall be named and addressed in compliance with LC 15.305 through 15.335.

(vi) Driveway Vehicle Passage Turnouts. Driveways in excess of 200 feet shall provide for a 20-foot long and eight-foot wide passage space (turn out) with six inches in depth of gravel and at a maximum spacing of 400 feet. Shorter or longer intervals between turnouts may be authorized by the Planning Director where the Director inspects the road and determines that topography, vegetation, corners or turns obstruct visibility.

(vii) Modifications and Alternatives. The standards in LC 16.211(8)(e)(i) through (vi) above may be modified by the Approval Authority provided

the applicant has submitted objective evidence demonstrating that an alternative standard would insure adequate access for fire fighting equipment from its point of origination to its point of destination.

Refer to the approved site plan attached to this memo (attachment #4). It shows the homesite location proposed by the Applicant, and accepted by the Hearings Official as meeting the siting standards.

The Appellant argues that the siting standards dictate that the homesite be located in the northern portion of the parcel. This alternative site plan is also included in this memo (attachment #5).

It is important to note that the prefatory remarks in LC 16.211(8) state that the *standards* of LC 16.211(8)(a) and (b) “...*be weighed*...” with the *requirements* of LC 16.211(8)(c) and (e). In other words, the selected homesite must meet the fuelbreak and road/driveway requirements in (8)(c) and (d), but considered against the standards for setbacks and minimizing impacts on forest lands of (8)(a) and (b). It is uncommon for a proposal to meet all of the standards, especially on narrow parcels such as in the present case. However, the Hearings Official found that the site proposed by the Applicant, in total, more closely meets the code standards than the site preferred by the Appellant.

Regarding the requirements of LC 16.211(8)(c) and (e), the Applicant’s homesite is on the more level site, can fit its primary and secondary fuelbreaks within the minimum 130’, has the shortest driveway (approximately 1800’) and shortest distance to a public road (Row River Rd.). By comparison, the Appellant’s chosen site requires an additional 900’ of driveway¹, additional turnouts due to the additional length, and possibly two additional culverts. While the Applicant’s site would require an easement onto the adjacent land to the east for secondary fuelbreaks, the need for a fuelbreak easement at the Appellant’s preferred site is minimized.

Regarding the standards of LC 16.211(8)(a) and (b), the Applicant’s site is 900’ from the closest dwelling, versus 1450’ for the Appellant’s site (see the table on p.3 of the Hearing Official’s decision). In terms of the site being located on least suitable portion of the tract for forest use, the Applicant’s homesite is located on soils having a higher productivity rating for timber versus the Appellant’s site (149 cu. ft./ac./yr. v. 45 cu. ft./ac./yr.). However, the Applicant’s forester has testified that the Applicant’s site is rocky with shallow soil depth, site specific characteristics which make the site less suitable for forest use. The Applicant’s site cannot meet the (non-mandatory) 100’ setback from adjacent F-2 zoned land, whereas the Appellants site most likely can (if moved slightly to accommodate the additional primary fuelbreak required by slopes

¹ The Appellant has also suggested an alternative access, traveling from the homesite north to Ross Lane and Cerro Gordo Roads, then southward to Row River Road. This access would require the Applicant to obtain an easement from the Cerro Gordo association along the entire route up to Row River Road. Such easement would also require the Applicant to comply with additional requirements of that association.

exceeding 10%). Lastly, the Applicant already has on file a letter from the local fire district attesting that the already built driveway access is satisfactory.

Overall, the Hearings Official agreed with the Planning Director that the Applicant's chosen homesite more closely meets the requirements of LC 16.211(8) than the Appellant's suggested site.

If, pursuant to Lane Code 14.600(2)(d), the Board agrees with the Hearings Official's decision, it is then appropriate not to hear arguments on the appeal and to adopt the attached Order affirming and adopting the Hearings Official's justification for the decision, findings of fact, and conclusions of law as written in his decision of February 18, 2009.

If on the other hand the Board concludes that further interpretation of issues raised in the appeal is necessary, then it is appropriate to schedule an on the record hearing as authorized by Lane Code 14.600(2)(c) and conducted pursuant to Lane Code 14.600. A new Order with Findings will be needed in lieu of the attached Order.

Analysis of Election to Hear Criteria.

Each Lane Code 14.600(3)(a)-(d) election-to-hear criterion is presented below with the Director's analysis.

1. The issue is of Countywide significance.

The issues raised in the appeal concern the F-2 zone siting standards and how they apply to the particulars of the subject property. As such they are site-specific and are not of countywide significance.

2. The issue will reoccur with frequency and there is a need for policy guidance.

The issues associated with this appeal are unlikely to reoccur "with frequency". The siting standards were applied based on the specific topography, soils, and property dimensions of the subject parcel, and within the surrounding context of land uses. This combination of factors is unique to the subject property.

There is no need for policy guidance if the Board agrees with the interpretations of Lane Code by the Hearings Official.

3. The issue involves a unique environmental resource.

No unique or rare environmental resources on the property have been identified in the record.

4. The Planning Director or Hearings Official recommends review.

Neither the Planning Director nor the Hearings Official recommends review of this appeal.

D. Options

1. To hear the appeal on the record;
2. To not hear arguments on the appeal, affirm the Hearings Official's decision, and to expressly agree with his interpretation of local law and policy in the decision being appealed; or
3. To not hear arguments on the appeal and to remain silent on the Hearings Official's decision and interpretations.

E. Recommendation

Option 2 is recommended.

F. Timing

If the Board elects to hear the appeal, a date for an on-the-record hearing will need to be established following adoption of an Order electing to hear.

IV. IMPLEMENTATION/FOLLOW-UP

Notify the parties of the Board decision to adopt the attached Order; or

If the Board elects to hear the appeal, a new Order and Findings will need to be prepared and adopted, and notice of a hearing given, as soon as possible.

ATTACHMENTS

1. Board Order electing to not hear the appeal, with Exhibits "A" (findings) and "B" (Hearings Official Decision, February 18, 2009 with Affirmation of decision, March 4, 2009)—17 pp.
2. Complete copy of the appeal to the Board of Commissioners—26 pp.
3. Applicant's letter dated 3-24-09, requesting the Board not elect to hear this appeal—2pp.
4. Site Plan approved by the Hearings Official—1p.

5. Site Plan favored by the Appellant—1p.

The file record is available for review upon request. If an on-the-record appeal hearing is scheduled, a complete copy of the record with all evidence will be made available to the Board.

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

) IN THE MATTER OF ELECTING WHETHER
) OR NOT TO HEAR ARGUMENTS ON AN
) APPEAL OF A HEARINGS OFFICIAL'S
) DECISION AFFIRMING THE PLANNING
) DIRECTOR'S APPROVAL OF A FOREST
) TEMPLATE DWELLING (File PA 08-
) 5840/Cowan)

WHEREAS, the Lane County Hearings Official had made a decision affirming the Planning Director's approval of a forest template dwelling, application PA 08-5840; and

WHEREAS, the Lane County Planning Director had accepted an appeal of the Hearings Official's Decision pursuant to LC 14.515, requesting reconsideration of the decision; and

WHEREAS, the Lane County Hearings Official has affirmed his decision on application PA 08-5840; 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, 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 February 18, 2009 interpreting applicable provisions of LC 16.211(8), attached as Exhibit "B", is affirmed and adopted by the Board of County Commissioners as its own interpretation in reaching a final decision on this application.

DATED this _____ day of _____, 2009.

Chair, Lane County Board of Commissioners

APPROVED AS TO FORM
Date 4-7-2009 Lane County
Stephen Z. Vacker
OFFICE OF LEGAL COUNSEL

FINDINGS IN SUPPORT OF THE ORDER

1. Property involved in this action is identified as tax lot 201, map 20-02-33, located on the north side of Dorena Lake, approximately 4 miles east of Cottage Grove. Total parcel size is 15.9 acres. The property is designated as Impacted Forest Lands, F-2, LC 16.211.
2. In the form of application PA 08-5840, the property owner, in June 2008, requested the Planning Director approve a request for a dwelling in the Impacted Forest Lands (F-2) Zone, per LC 16.211(5) & (8). The approval was granted on October 24, 2008.
3. A timely appeal was filed by a neighboring landowner, and an appeal hearing before the Lane County Hearings Official was held on December 4, 2008. The record was held open for additional submittals until December 29, 2008.
4. On February 18, 2009, the Hearings Official issued a decision, affirming the Planning Director's decision and approving the proposal.
5. The appellant filed a timely appeal of the Hearings Official decision on March 2, 2009; the appeal was accepted by the Director and forwarded to the Hearings Official.
6. On March 4, 2009, the Hearings Official affirmed his decision.
7. The appeal states that the Approval Authority rendered a decision which misinterpreted the Lane Code, Lane Manual, State Law, and the Lane County Rural Comprehensive Plan.
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. The Board of Commissioners finds that the appeal involves a set of circumstances and a fact pattern particular to the property. While the appeal raises issues concerning interpretation of Lane Code 16.211(8), the issues raised in the appeal are adequately dealt with in the Hearings Official's decision of February 18, 2009, which was affirmed by the Hearings Official letter of March 4, 2009. The Board finds that the subject property has a unique combination of typography, soils, size, and configuration, and that the Hearings Official's treatment of it is appropriate and thus the Board finds that further evaluation of it for this reason is not necessary.
10. The Board of Commissioners finds that the issues associated with this appeal are unlikely to reoccur "with frequency", as the fact pattern is specific to the subject property. Additional policy guidance from the Board is not necessary in that the Board is satisfied with the reasoning and findings of the Hearings Official with respect to interpretation of LC 16.211(8), and the Board adopts and affirms the same in this Order. No further policy guidance from the Board is necessary at this time.
11. The Board of Commissioners finds that tax lot 201, which totals 15.9 acres, is not a unique environmental resource.

12. Neither the Planning Director nor the Hearings Official recommends review of the appeal by the Board.
13. 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.
14. The Board has reviewed this matter at its meeting of April 15, 2009 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.
15. The Board expressly agrees with the February 18, 2009 decision of the Lane County Hearings Official interpreting LC 16.211(8), attached here as Exhibit "B". The Hearings Official's decision and interpretations are affirmed and adopted by the Board of County Commissioners as its own interpretation.

**LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR APPROVAL
OF A SPECIAL USE PERMIT FOR A "TEMPLATE" FOREST DWELLING**

Application Summary

In 1992, Michael Cowan, 33546 Cedar Park Pl., Cottage Grove, OR 97424, requested (PA 4349-02) that the Planning Director approve a special use permit allowing a dwelling in the Impacted Forest Lands (F-2) zone in accordance with the "Template Dwelling" provisions of Lane Code 16.211(5) and as authorized by the Administrative Rule Chapter 660, Division 006 on a portion of Tax Lot 201, Assessor's Map 20-02-33. This application was conditionally approved by the Lane County Planning Director but expired on July 11, 2007. The applicant reapplied on June 26, 2008 and was approved by the Planning Director on October 24, 2008. This approval was appealed in a timely manner by Canfield Associates, Oregon, Ltd. to the Lane County Hearings Official.

Parties of Record

Michael Cowan
Canfield Associates, Oregon

Shadowbrook Inc.
Thom Lanfear

Christopher Canfield

Application History

Hearing Dates: December 4, 2008
(Record Held Open Until December 29, 2008)

Decision Date: February 18, 2009

Appeal Deadline

An appeal must be filed within 10 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 County Rural Comprehensive Plan
Lane Code 16.211(8)

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," can be identified as a portion of Tax Lot 201, Assessor's Map 20-02-33. The subject

property, which is currently vacant, was first determined to be a legal lot through PA 0170-93 and subsequently through PA 3187-96. It is 15.87 acres in size.

2. The proposed dwelling site is located in an area that consists of a mixture of small-scale forest land properties and parcels zoned RR-10. The site is located in the southeast-central portion of the body of the subject property, about 30 feet from the eastern perimeter of the lot. The proposed homesite will impact 0.45 acres of land (footprint plus primary fuel break).
3. In order to support a "template" single-family dwelling or manufactured home on property zoned F-2 and which is predominately composed of soils capable of producing 85 cubic feet per acre per year of wood fiber, Lane Code 16.211(5)(c)(iii)(aa) requires that the applicant show that 11 or more lots or parcels can be identified within a 160 acre square centered on the subject property. There are at least 11 parcels completely or partially located within a 160-acre square template centered on the subject property. One of the parcels, Parcel #4 as identified on the applicant's parcel template map, may contain several illegal parcels but the parcel itself was created by Partition M710-77 (Parcel 3) and is nevertheless a legal parcel.

The subject property is composed of a mixture of 43C Dixonville-Philomath-Hazelair, which has a capability of 54 cubic feet per acre per year, and 113C&E Ritner, which has a capability of 149 cubic feet per acre per year of wood fiber. Sixty-four percent of the subject property's soils are Ritner and 36 percent are the Dixonville complex. The average productivity of the parcel's soils is 115 cubic feet per acre per year. The site of the proposed dwelling is located on the Ritner soils while the suggested dwelling site is located on the Dixonville complex soils. The suggested dwelling site is forested and is subject to forest management.

Parcels that fall wholly or partially within a 160-acre square centered on the subject property and that existed prior to January 1, 1993 can be identified as follows:

No.	Taxlot	Assessor's Map
1	209	20-02-28
2	500	20-02-28
3	219	20-02-28
4	221	20-02-28
5	102	20-02-32
6	200	20-02-33
7	202	20-02-33
8	203	20-02-33
9	204	20-02-33
10	301	20-02-33

11		Dorena Reservoir
12	205	20-02-33
13	217	20-02-28
14	215	20-02-28

4. Lane Code 16.211(5)(c)(iii)(bb) requires that the applicant show that at least three dwellings or manufactured dwellings existed on January 1, 1993 within the 160-acre square. The parcels upon which these dwellings are located are identified on the applicant's parcel template map.
5. The appellant have posited an alternative dwelling site as being more consistent with the admonition of Lane Code 16.211(8)(a)(i) that the proposed dwelling site be near dwellings or manufactured dwellings on other tracts. The following table compares distances of nearby dwellings with the applicant's proposed and the appellant's suggested dwelling site:

Map & Tax Lot	Distance from Proposed Site	Distance from Suggested Site
20-02-33; #200	900' SE	2000' SE
20-02-33; #203	1400' SW	2400' SW
20-02-28; #208	2600' NE	1900' NE
20-02-28; #211	2500' NE	1850' NE
20-02-28; #500	1800' NW	1300' W
20-02-28; #209	2150' NW	1450' NW

6. The proposed site is immediately adjacent to an existing logging road through the subject property. The dwelling cannot be located within the panhandle access and accommodate fuel breaks. The private road known as Ross Lane is 800 feet from the suggested building site and the applicant currently has no legal right to use it for access. The access from Ross Lane to the northern portion of the subject property does not exist now and Ross Lane is not a public road. The representatives of Cerro Gordo offer road and utility access on this private road to the northern end of the subject property in order to support their contention that the building site should be located there. Ross Lane is a private road approved for use by the Cerro Gordo Cooperative only. Only members of the Cerro Gordo Cooperative, those persons whose properties are encumbered by the many restrictions contained in the Cerro Gordo Charter, may use the road authorized in the Declaration of Private Road recorded in 1985.
7. The appellant's suggested building site is not on the most level part of the property. The most level parts of the tract are located above the panhandle in the southeast portion of the property where the proposed homesite is located. This location is the first level part of

the property closest to the panhandle providing legal road access and nearest to the dwellings on other tracts to the south (tax lot 203) and east (tax lot 200).

Decision

THE DECISION OF THE PLANNING DIRECTOR APPROVING THE COWAN REQUEST (PA 08-5840) FOR A TEMPLATE DWELLING ON TAX LOT 201, ASSESSOR'S MAP 20-02-33 IS AFFIRMED, with the following modification to Condition of Approval #6:

6. The Applicant shall submit a recorded easement allowing the perpetual maintenance of the secondary fuel break on the property adjacent on the east. The removal of vegetation within the secondary fuel break shall be limited to the purpose of this fuel break zone, as explained in LC 16.211(8)(c)(i)(bb), and not for aesthetic purposes.

Justification for the Decision

Lane Code 16.211(5) allows the development of one single-family dwelling or manufactured dwelling on property zoned Impacted Forest Land (F-2) if an applicant meets what is called a "template test." This test requires, among other things, that a tract be lawfully created and that it have no other dwellings on it. Further, if the tract is predominantly composed of soils that are capable of producing 85 cubic feet per acre per year of wood fiber, then it must be shown that there are at least 11 parcels and three dwellings that existed in 1993 that are partially or wholly located within a 160 acre template that is centered on the subject property.

The appellant has identified multiple assignments of error in its appeal of the Planning Director's decision.

Assignment of Error #1: *The parcel count required by Lane Code 16.211(5)(c)(iii)(aa) was not totally comprised of lawful parcels created prior to January 1, 1993.*

Citing the *Reeves* case, the appellant correctly points out that the county may only consider lawfully created lots or parcels when applying the forest "template" dwelling test¹ and cites the definition of "legal lot" found in Lane Code 16.090:

"Legal Lot. A lawfully created lot or parcel. A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are changed or vacated or the lot or parcel is further divided as provided by law."

Regardless of whether some of the lots or parcels being counted may have had their boundaries altered by property line adjustments, the applicant's template analysis is based upon those properties as they existed on January 1, 1993. I do not believe that subsequent property line

¹ *Reeves v. Yamhill County*, 53 Or LUBA 4 (2007)

adjustments, legal or illegal, are relevant to this criterion. It has been noted that at least one of the counted parcels is comprised of illegal parcels. However, the counted parcel was lawfully created through the partitioning process and this circumstance does not thereby make that parcel illegal or uncountable.

The appellant next argues that the property line adjustment(s) recently applied to the subject property violate the precepts annunciated by LUBA in the *Phillips* case² as applied to sub-minimum sized lots.

Lane County has provided that a legal lot verification is the process through which the legality of the creation and reconfiguration of a unit of land may be determined. Lane Code 13.010 defines a "legal lot verification" as:

"A determination that a unit of land was created in conformance with the Lane Code and other applicable law. A preliminary determination shall only become final when it is made and noticed pursuant to LC 13.020. "

Lane Code 13.020 states:

"A legal lot verification by the Director is considered final when it is made and noticed pursuant to LC 14.100 and shall occur when:

- (1) An application is submitted and reviewed pursuant to LC 14.050, excluding 14.050(3)(c), for a legal lot verification on a lot or parcel resulting from a property line adjustment; or*
- (2) If notice is requested by the property owner for any legal lot verification, upon submitting an application for review pursuant to LC 14.050, excluding 14.050(3)(c). "*

The property line adjustments of the subject property were noticed as land use decisions³ and were not challenged. I do not believe that they can be collaterally attacked in this proceeding.

This allegation of error is dismissed.

Assignment of Error #2: *A template dwelling may not be approved because the subject property is not a legal lot.*

The subject property was the subject of legal lot verification PA 0170-93. Subsequent to the filing of the appeal, the appellant has stipulated that the subject property is a legal lot.

² *Phillips v. Polk County*, 213 Or.App. 498, rev. denied 344 Or. 43 (2008)

³ See PA 06-6550 and PA 07-5084.

Assignment of Error #3: The Planning Director did not properly apply Lane Code 16.211(8) to the application.

This issue is the heart of the appeal. The appellant believes that the template dwelling should be located at the north end of subject property while the applicant proposes to site the dwelling on the southeast portion of the property, much closer to Row River Road. The siting standards of Lane Code 16.211(8) are intended to guide the placement of the template dwelling

- (8) ***Siting Standards for Dwellings, Structures and Other Uses. The following siting standards shall apply to all new dwellings, manufactured dwellings and structures, and other uses as specified above in LC 16.211(2)(h) and (j), and in LC 16.211(3) through (7) above. These standards are designed to make use uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. The standards in LC 16.211(8)(a)–through (b) below shall be weighed together with the requirements in LC 16.211(8)(c) and (e) below to identify the building site.***

- (a) ***Setbacks. Residences, dwellings or manufactured dwellings and structures shall be sited as follows:***

- (i) ***Near dwellings of manufactured dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or slope greater than 40 percent;***

Near Dwellings. Two dwellings are located within 1400 feet of the site proposed by the applicant, one of which is located 900 feet from the site. One dwelling is located 1300 feet from the site suggested by the appellant. The three dwellings closest to the site proposed by the applicant average about 1,367 feet from that location and the three dwellings closest to the site suggested by the appellant average about 1,516 feet from that location. None of these dwellings can be considered to be “close” to either site and it is clear that there is no meaningful clustering of dwellings in any case. Given the fact that the nearest dwelling is closer to the applicant’s proposed site than to the appellant’s suggested site and, on the average there are three dwellings closer to the former than to the latter, the site proposed by the applicant appears to best satisfy this criterion.

Level part of the tract. The applicant’s proposed dwelling site is located on nearly level ground that is the closest such ground to Row River Road. It is also the most level part of the tract nearest to the dwellings on other tracts to the south (tax lot 203) and east (tax lot 200). The site suggested by the appellant is located on a southwest slope greater than 10 percent.

Areas that exceed 10 percent are subject to the creation of increased fire breaks in the downslope direction by Lane Code 16.211(8) (c)(i)(aa). The site proposed by the applicant appears to best satisfy this criterion.

Least suitable portion of the tract. The site proposed by the applicant is occupied by Rittner Soils that has a forest productivity rating of 149 cubic feet per acre per year. The site suggested by the appellant is occupied by Dixonville-Philomath-Hazelair complex soils that has an estimated forest productivity rating of 45 cubic feet per acre per year. These latter soils are considered to be forest soils.

The National Resources Conservation Service (NRCS) description of the Rittner soil notes that one limitation is that it may be shallow to bedrock, limiting tree growth. In the present case, an expert forester has examined the site chosen by the applicant and found it to be a rocky bluff, with a high rock content that creates very shallow rooting conditions. The apparent higher productivity of the Rittner soils mapping lessens upon a thorough site investigation although the applicant's forester did not attach a revised soil productivity figure to the proposed dwelling site but did conclude that the differences in productivity were "largely mitigated."

Forest use also includes other activities such as wildlife habitat. In this context, the site suggested by the appellant lies immediately between two animal corridors and, it is argued, would diminish the connectivity between these two wildlife areas. This point was not disputed by the appellant and therefore is assumed to be valid.

At least 30 feet away from any ravine, ridge or slope greater than 40 percent. Neither site is located near a ravine, ridge or slope that is greater than 40 percent.

(ii) *With minimal intrusion into forest areas undeveloped by non-forest uses.*

The homesite and primary fuel break proposed by the applicant will impact 0.45 acres and the development of the secondary fuel break will increase than amount to 2.65 acres. This location has an access road that extends from Row River Road to the homesite.

The homesite suggested by the appellant is located on a sloped, forested area. This site would require an additional 50-feet of primary safety zone in the downslope direction and an associated larger secondary fuel break. The homesite and primary fuel break would impact 0.83 acres and the

development of the secondary fuel break would increase that amount to 3.49 acres. This homesite would require additional road development of about 0.47 acres.

The appellant's forester has suggested that the secondary fuel break associated with the applicant's proposed site will have a greater adverse impact on forest productivity than the appellant's suggested site. The reasoning is that the goals of maintaining a commercial tree operation and applying the actions necessary for secondary fuel break management are not compatible; that is, the latter activities will severely compromise the commercial potential of that stand of trees. The applicant's forester agrees that the secondary fuel break will reduce productivity but not to the degree suggested by the appellant's forester. The former suggests two industry-accepted methods of reducing the undesirable growth of tree limbs, which requires larger spacing between tree crowns. This forester likens the increased management burden as being equal to keeping a large landscaped yard trimmed and this analogy was not disputed.

The analysis does not seem to clearly favor either site. While the location of the dwelling suggested by the appellant, including fuel breaks and access road, would occupy about 0.9 acres more than the location proposed by the applicant, the impact of the secondary fuel break in that location would have less consequence because of the lower soil productivity.

- (iii) *Where possible, when considering LC 16.2100(8)(a)(i) and (ii) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and at least 100 feet from property zoned F-2 or EFU; and*

Both the site proposed by the applicant and the site suggested by the appellant are more than 500 feet from property zoned F-1. The site suggested by the appellant is over 100 feet from all property zoned F-2 or EFU. The site proposed by the applicant is 30 feet from property zoned F-2 and more than 100 feet from property zoned EFU.

- (iv) *Except for property located between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries, where setbacks are provided and in LC 16.253(6), the riparian setback area shall be the area between a line 100 feet above and parallel to the ordinary high water of a Class I stream designated for riparian vegetation protection in the Rural Comprehensive Plan. No structure other than a fence shall be located*

closer than 100 feet from ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A modification to the riparian setback standard for a structure may be allowed provided the requirements of LC 16.253(3) or LC 16.253(6), as applicable, are met; and

Neither site is located closer than 100 feet from the ordinary high water line of a Class I stream.

(v) *Structures other than a fence or sign shall not be located closer than:*

(aa) *20 feet from the right-of-way of a state road, County road or a local access public road specified in Lane Code LC Chapter 15; and*

Both of the sites comply with this standard.

(bb) *30 feet from all other property lines; and*

The site proposed by the applicant is 30 feet from the nearest property line and the site suggested by the appellant is 130 feet from the nearest property line. Both sites comply with this standard.

(cc) *The minimum distance necessary to comply with LC 16.211(8)(a) above and LC 16.211(8)(b) through (d) below.*

See analysis below.

(b) *The amount of forest lands used to site access roads, service corridors and structures shall be minimized.*

The site proposed by the applicant requires the development of a 1,768-foot long driveway from Row River Road. This driveway would be 12 feet wide, would require four 20-foot long by 8-foot wide turnouts for emergency vehicle access and would occupy about 0.5 acres of land. The amount of land necessary to accommodate the proposed dwelling and fire breaks is about 2.65 acres.

The site suggested by the appellant is 800 feet from Ross Lane, a private road that currently provides access to 12 dwellings, and is 2,700-feet from Row River Road. However, the applicant does not have a legal right of access to the former road and acquiring this right would apparently necessitate acceptance of the many restrictions contained in the Cerro Gordo Charter. A driveway to Row River Road

from this location would be 12 feet wide, would require six 20-foot long by 8-foot wide turnouts for emergency vehicle access and would occupy about 0.77 acres of land. The amount of land necessary to accommodate the proposed dwelling and fire breaks is about 3.49 acres.

(c) ***Fire Siting Standards. The following fire-siting standards or their equivalent shall apply to new residences, dwellings, manufactured dwellings or structures:***

- (i) ***Fuel-Free Breaks. The owners of dwellings, manufactured dwellings and structures shall maintain a primary safety zone surrounding all structures and clear and maintain a secondary fuel break on land surrounding the dwelling or manufactured dwelling that is owned or controlled by the owner in compliance with these requirements.***

(aa) ***Primary Safety Zone***

Because the site proposed by the applicant is on level ground, the primary safety zone is 30 feet and can be accommodated on the subject property.

The site suggested by the appellant is on a slope in excess of 10 percent and will require an additional 50-feet of primary safety zone in the downslope direction.

(bb) ***Secondary Fuel Break***

The site proposed by the applicant can accommodate the secondary fuel break standard of 100 feet in all directions around the primary safety zone except on the east. A firebreak easement agreement has been recorded that burdens tax lot 200, adjacent on the east, and that allows the clearing and maintenance of the secondary fuel break by the applicant on tax lot 200. I tend to agree with the appellant, however, regarding the open-ended language of the easement in regard to the applicant's discretion to cut trees in this area. This discretion is tightened in the conditions approval. On the other hand, the concern that the applicant will use the lake viewshed as a determinate factor in the management of the secondary fuel break does not appear to be logical as it appears that tree cutting outside of the fuel break area would be necessary in order to maintain the view of the lake from the proposed dwelling site.

The site suggested by the appellant can accommodate a 100-foot secondary fuel break on the subject property.

- (ii) ***Structural Fire Protection.*** *The dwelling or manufactured dwelling shall be located on a parcel within a fire protection district or shall be provided with residential fire protection as evidenced by a long term contract with a fire protection district (FPD) recorded in Lane County Deeds and Records. ...*

The site proposed by the applicant was annexed into the South Lane Fire Protection District on April 18, 1995. The site suggested by the appellant was previously located within that district.

- (d) ***Domestic Water Supplies.*** *Evidence shall be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners. ...*

This standard was not involved in the allegations of error.

- (e) ***Fire Safety Design Standards for Roads and Driveways.*** *Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for fire fighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways shall comply with the standards specified below in LC 16.211(8)(e). Evidence of compliance with the standards specified in LC 16.211(8)(e) below should include objective information about the fire fighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.*

The subject property is accessed by Row River Road, a paved County Road that extends from the City of Cottage Grove. The route of travel from the fire station

at 233 Harrison St in Cottage Grove to the legal access to the property on Row River Road consists entirely of paved publicly maintained roads. A letter from the South Lane Fire Protection District confirms adequate access to the property. Traveling from Row River Road, the fire vehicles would reach the site proposed by the applicant first as it is about 1,000 feet closer to the public road than the site suggested by the appellant.

Conclusion

The analysis under Lane Code 16.211(8) is rarely straightforward and this application is no exception. First, the Code requires that the standards of Lane Code 16.211(8)(a) & (b) be weighed together with the requirements of Lane Code 16.211(8)(c) and (e). It appears that the applicant's proposed site more closely complies with 16.211(8)(a) & (b) as it is closest to an existing dwelling (900 feet) and three existing dwellings (an average of 1,367 feet) and is on the most level ground, an important determinate of fire hazard. Neither dwelling site is located near a ravine, ridge or slope in excess of 40 percent. The question of the which site is less suitable is a toss up as the rocky soil conditions of the applicant's proposed site do not completely mitigate its better soils in regard to commercial productivity but the location of appellant's suggested site is less suitable to the forest use of wildlife habitat. The applicant's proposed site is less intrusive into forest areas undeveloped by non-forest uses, primarily because of its larger fuel break area and longer access road but the site suggested by the appellant completely satisfies the requirement of Lane Code 16.211(8)(a)(iii). On the whole, the applicant's proposed site seems to be marginally more consistent with the criteria embodied in Lane Code 16.211(8)(a).

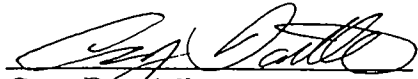
Lane Code Lane Code 16.211(8)(b) is concerned with the minimization of the amount of forest land used to site access roads, service corridors and structures. Assuming that access must be from Row River Road, the footprint of the applicant's proposed site is the smallest.

Both dwelling sites can meet the criteria of Lane Code 16.211(8)(c), albeit the applicant must utilize a portion of the adjacent property to the east for secondary fuel break purposes. And consistent with Lane Code 16.211(8)(e), both dwelling sites have access to fire protection via Row River Road and apparently there is no serious issue of whether the driveway from Row River Road can be constructed to comply with the fire safety design standards of the Lane Code. No information was provided about slopes or other impediments to meeting the fire safety design standards that might be associated with accessing Ross Lane to serve the appellant's suggested site.

Balancing Lane Code 16.211(8)(a) and (b) together, and then with Lane Code 16.211(8)(c) and (e), it would appear that the preponderance of the evidence supports a conclusion that the applicant's proposed dwelling site is most consistent with the standards embodied in those criteria. And there certainly is insufficient evidence in the whole record to conclude that the Planning Director's determination of this fact was clearly wrong.

Therefore, the Planning Director's approval of this application, as slightly modified, is affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary Darnielle", written over a horizontal line.

Gary Darnielle
Lane County Hearings Official

LCOG

LANE COUNCIL OF GOVERNMENTS

March 4, 2009

Mr. Kent Howe, Director of Planning
Lane County Land Management Division
125 E. 8Th Ave.
Eugene, OR 97401

Re: *Appeal of Reconsidered Hearings Official Decision in Cowan (PA 08-5840)*

Dear Mr. Howe:

Christopher Canfield has appealed my February 18, 2009 decision in PA 08-5840 regarding a request for a special use permit for a template dwelling on tax lot 201, assessor's map 20-02-33. Upon my review of this appeal, I find that the issues raised in the appeal were addressed in the decision and that there is no merit in my considering those issues further. Accordingly, on the authority of Lane Code 14.535(2)(c), I shall affirm my February 18, 2009 decision.

Sincerely,



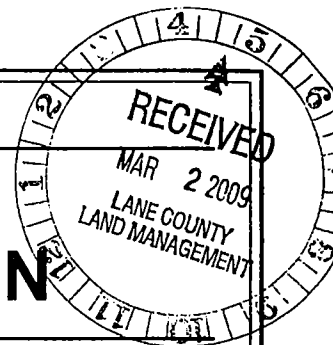
Gary L. Darnielle
Lane County Hearings Official

cc: Jerry Kendall (file)
Mr. Jim Spickerman



LAND MANAGEMENT DIVISION

APPEAL OF A HEARINGS OFFICIAL DECISION



PUBLIC WORKS DEPARTMENT 125 E 8th AVENUE, EUGENE OR 97401

Planning: 682-3807 Building: 682-3823 Sanitation: 682-3754

For Office Use Only: FILE # PA085840B CODE: BCAPPEAL FEE: \$3,762

Appellant: Canfield Associates, Oreg. Ltd.

Mailing address: PO Box 569, Cottage Grove OR 97424

Phone: 942-7720

Email: cerrogordo@igc.org

Signature: _____

ccayin

Appellant's Representative: Christopher Canfield, General Partner of Canfield Associates, Oreg. Ltd.

Mailing address: (same as above)

Phone: _____

Email: _____

Signature: _____

Required submittals. Your appeal application will be rejected if it does not contain all the required information.

1. A copy of the decision being appealed, with the department file number. File # PA 08-5840
2. The \$3,762 appeal fee, payable to Lane County. (*See the reverse side for important fee information*)
3. Indicate the deadline to submit the appeal. (*Found in the Hearing Official's Decision*) 3/2/2009
4. Check one of the items below to identify your party status with the right to appeal the Hearings Official's decision:

☐ I am the owner or contract purchaser of the subject property;

☐ I am the applicant for the subject application;

☒ Prior to the decision by the Hearings Official, I submitted written testimony into the record

☐ I am not one of the persons mentioned above, but wish to appeal the Hearings Official's decision for the reasons explained in my letter.

5. A letter that addresses each of the following three standards:

a. The reason(s) why the decision of the Hearings Official was made in error or why the Hearings Official should reconsider the decision;

b. An identification of one or more of the following general reasons for the appeal, or request for reconsideration:

- The Hearings Official exceeded his or her authority;
- The Hearings Official failed to follow the procedure applicable to the matter;
- The Hearings Official rendered a decision that is unconstitutional;
- The Hearings Official misinterpreted the Lane Code, Lane Manual, State Law, or other applicable criteria.

c. The Hearings Official should reconsider the decision to allow the submittal for additional evidence not in the record that addresses compliance with the applicable standards or criteria.

6. Any additional information in support of your appeal.

ATTACHMENT 2

Canfield Associates, Oreg. Ltd. COMMUNITY DEVELOPMENT
Dorena Lake, Box 569 Cottage Grove, Oregon 97424 541-942-7720 cerrogordo@igc.org

February 28, 2009

Gary Darnielle, Hearings Official
c/o Jerry Kendall, Associate Planner
Lane County Land Management Division
125 East 8th Ave
Eugene OR 97401

Re: Appeal of PA 08-5840
F2 template dwelling on tax lot 201 of map 20-02-33

Dear Mr. Darnielle:

This letter is written to appeal your revised conditional approval set forth in your decision dated February 18, 2009; and to request you to reconsider the decision after re-examining the facts and evidence now in the record; and if necessary, to allow the submittal of additional evidence to clarify facts and address compliance with the applicable standards and criteria.

In our opinion the decision misinterpreted the Lane Code, Lane Manual, State Law, the Lane County Rural Comprehensive Plan and other applicable criteria, in part because the decision relied upon inaccurate facts and analysis. The specific errors are described in the attached letter.

If you decide not to reconsider your decision, we ask you to please correct misstatements of fact to simplify the appeal process. Then we would like the opportunity to add a letter asking the Board of Commissioners to hear the appeal.

Thank you,



Christopher Canfield
Cerro Gordo Community Development Coordinator

cc: Jim Spickerman
Gleaves, Swearingen, Potter & Scott
PO Box 1147, Eugene OR 97440

Cerro Gordo Cooperative, Inc.
c/o Jim Stevenson, Manager
PO Box 164, Cottage Grove OR 97424

Canfield Associates, Oreg. Ltd. COMMUNITY DEVELOPMENT
Dorena Lake, Box 569 Cottage Grove, Oregon 97424 541-942-7720 cerrogordo@igc.org

February 28, 2009

Gary Darnielle, Hearings Official
c/o Jerry Kendall, Associate Planner
Lane County Land Management Division
125 East 8th Ave
Eugene OR 97401

Re: Appeal of PA 08-5840
 F2 template dwelling on tax lot 201 of map 20-02-33

Dear Mr. Darnielle:

Thank you for this opportunity to address our concerns about your decision dated February 18, 2009. We respectfully request your reconsideration of the evidence in the record, the provisions of the Lane County Rural Comprehensive Plan, and the process outlined in Lane Code 16.211(8).

As you noted on page 6 of your decision, the heart of our appeal -- and the only substantive issue -- is the implementation of the siting standards in Lane Code 16.211(8). In the conclusion of your decision you wrote, "The analysis under Lane Code 16.211(8) is rarely straightforward and this application is no exception." In most cases the weighing of the siting standards prescribed by the code may require choices based upon small differences in details. However, in this case the options are dramatically different if one simply follows the code, the county plan and the basic facts of the subject property.

Lane Code 16.211(8) begins as follows:

"Siting Standards for Dwellings, Structures and Other Uses. The following siting standards shall apply to all new dwellings, manufactured dwellings and structures These standards are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks, and to conserve values found on forest lands. The standards in LC 16.211(8)(a) through (b) below shall be weighed together with the requirements in LC 16.211(8)(c) and (e) below to identify the building site."

The instructions are clear enough:

1. *Meet* the fire safety *requirements* in subsections (c) and (e); and
2. *Weigh* the siting *standards* to identify the building site which best
3. Satisfies the stated *goals*.

Fortunately the subject property offers at least two sites which meet the fire safety requirements: the applicant's "proposed" site located 400 feet north of the north end of the panhandle access to Row River Road; and the appellant's "suggested" site at the northeast corner of the property.

Addressing the siting standards in subsections (a) and (b) requires both an examination of the facts of the subject property and its neighbors, and then a weighing of the standards to identify the building site. The question is how to weigh the standards; and the code answers this question by listing the goals which the standards are designed to satisfy.

The applicant has responded to the appeal with facts and arguments in favor of its proposed site and goal -- the lake view home site advertised in the Multiple Listing -- but the results of its use of the siting standards do not meet most of the goals or the siting standards of LC 16.211(8). The applicant's proposed home site actually:

- Maximizes its distance from dwellings on other tracts;
- Maximizes its distance from existing roads; and
- Sites the dwelling on a nearly level site at the top of the steepest grade on the parcel;
- In the middle of the most suitable portion of the tract for forest use;
- With maximum intrusion into forest areas undeveloped by non-forest uses -- on the applicant's property and by easement on the neighbor's;
- Without maintaining 130 feet from adjoining property zoned F-2; and
- Without minimizing the amount of forest lands used to site structures -- and thus without minimizing the amount of forest lands used for fire breaks..

This long list of problems associated with the applicant's proposed home site demands a review of the goals of LC 16.211(8) to revise the weighing of the siting standards to better meet the goals. The applicant's proposed home site does a fair job of addressing the goal of minimizing wildfire hazards and risks by meeting the requirements of subsections (c) and (e) (although its location in the middle of productive forest soils at the top of the steepest slope is not the best way to address this goal). The more serious problem is the applicant's proposed home site is not "compatible with forest operations," nor does it "conserve values found on forest lands."

Together these two goals express the basic goal of the code, the county plan and state land use law: preserve forest land for forest uses (and of course "minimize wildfire hazards and risks" also expresses this basic goal).

All of the goals of LC 16.211(8) will be much better addressed if we allow the goals to guide the weighing of the siting standards of subsections (a) and (b).

And in this case -- given the facts of the subject property and its neighboring properties -- only one siting standard needs to be weighed more heavily to better satisfy all of the code goals, most of the siting standards and the provisions of the Lane County Rural Comprehensive Plan and its implementing zoning.

The one siting standard which should be weighed more is of course soils -- listed under LC 16.211(8)(a) as "Residences . . . shall be sited . . . (i) . . . on the least suitable portion of the tract for forest uses" Yes, it is only one of many siting standards; but soil type is the most fundamental factor. The preponderance of productive forest soils on the subject property and its neighbors to the east is the reason the properties are forested and zoned for forestry. And the preponderance of the Dixonville-Philomath-Hazelaire soils complex on the neighboring properties to the west and north is the reason the Lane Country Rural Comprehensive Plan

designates about 617 acres of Cerro Gordo as Non-Resource Land (*i.e.*, non-forest land) with rural residential zoning. And the 64% of the subject property with productive Ritner forest soil is what grows the forest which its forest zoning and the goals and siting standards of LC 16.211(8) were enacted to preserve.

Nor is it necessary to diminish the forest on the subject property or its neighbors to accommodate a template dwelling permitted by LC 16.211(5) with the fire safety requirements of LC 16.211(8) subsections (c) and (e). This is because the northeast corner of the subject property includes about 3.8 acres of the Dixonville-Philomath-Hazelaire soils complex -- more than enough area to accommodate a template dwelling and its required fuel breaks.

Relocating the home site from the applicant's proposed site to the appellant's suggested site would greatly reduce the impacts on the forest. In fact, the most authoritative evidence in the record even quantifies the reduction in forest impact. According to the "Lane County Soils Ratings for Forestry and Agriculture" (Exhibit K to my letter dated 12/22/08), the Ritner forest soils on the subject property (113C & E) will grow 149 cubic feet per acre per year -- about three times as much as the Dixonville-Philomath-Hazelaire soils complex (43C), which will grow about 50 cubic feet per year (54 on page 2, 46 on page 8). (Please review maps prepared by forester Jerry Witler which combine the Lane County soils maps with parcel maps prepared by surveyor Jonathan Oakes, Exhibits A, B, F, G, H & I to my 12/22/08 letter.)

The applicant's and the appellant's foresters have submitted their opinions about the impact of fuel breaks on the forest (as measured by timber growth, but obviously also relevant to natural growth of the forest). Mr. Setchko suggested allowing the crowns to close, but Mr. Ferguson identified the need for wider spacing to meet the fire safety requirement. Whatever the optimum solution may be, the negative impacts on forest growth in the secondary fuel break will be about three times more if located on Ritner soils instead of on Dixonville-Philomath-Hazelaire soils (which means the secondary fuel break on the latter could be improved with wider and safer spacing with only one third of the impact on forest growth).

The foresters have also expressed different opinions about the productivity of the soils on the proposed and suggested sites. Any argument attempting to equate the productivity of the soils is contradicted by the 1986, 1990 and 2005 aerial photos in the record (Exhibits L, M & N to my 12/22/08 letter), which show dense timber previously growing in the area of the applicant's proposed site (on the Ritner soil), and scattered clumps of trees growing in meadow land in the area of the appellant's suggested site (on Dixonville-Philomath-Hazelaire soils). Nor is any such argument going to significantly reduce the threefold difference between the two in the county soils ratings.

Mr. Setchko claimed the Dixonville-Philomath-Hazelaire soils complex is a forest soil because the Oregon Department of Forestry requires any clearcut of such soils with forest zoning to be replanted. The requirements of the Forest Practices Act are not relevant to the definition of forest land under Oregon land use law, which has determined the Dixonville-Philomath-Hazelaire soils complex to be non-resource soils. Please see the Cerro Gordo Non-Resource Land Designation Findings and Conclusions in the Lane County Rural Comprehensive Plan.

Relocating the home site to the Dixonville-Philomath-Hazelaire soils would also address many of the other siting standards.

- LC 16.211(8)(a)(i): Your decision acknowledges neither site is located close to existing dwellings. However, the northern site would be contiguous with the Cerro Gordo "Hidden Meadow," which the Lane County Rural Comprehensive Plan has zoned RR-10 and designated as a site for clustered homes. (No, a cluster subdivision is not required to cluster homes; only a partition or subdivision with two or more parcels with home sites in the meadow as specified by the Cerro Gordo Wildlife Plan -- please see the map prepared by wildlife biologist Dick Vander Schaaf and the Cerro Gordo Non-Resource Land Designation Supplemental Findings adopted 9/11/84 by the Board of Commissioners, both Exhibit 5 to my 10/3/08 letter. No, I do not agree with Mr. Lanfear's speculation that the northern portion of the Shadowbrook property would be best used as a connection of the wildlife corridors; on the contrary, as shown on the wildlife biologist's map, the whole purpose of preserving wildlife corridors is to allow clustered housing between the corridors, with no east-west connections required or recommended.) The purpose of the standards "near dwellings" and "near existing roads" is to keep any new homes out of the forest and close to existing development. The northern site would be contiguous with future homes and less than half the distance from Ross Lane than the applicant's site. (The Cerro Gordo Cooperative wrote a letter to offer access via its private road Ross Lane; but it was not meant to imply the suggested northern site should be accessed by Ross Lane, nor does the siting standard require it -- but some future owner of the subject property might want it.)
- LC 16.211(8)(a)(i): A portion of the applicant's site is located on some of the least sloping (but not level) land on the property; but it is also located at the top of the steepest slope on the property -- fine for the lake view, but less fire-safe (and requiring more severe thinning in the secondary fuel break to maintain the same distance between crowns). The evidence in the record shows that the appellant's suggested site has a slope of *less than 10%*, not more. Please compare the topographic maps of the two sites (Exhibits A & B to my 12/22/08 letter). You will see the applicant's home site and primary safety zone has a slope of 7-10% (a 10- to 14-foot fall in 140 feet) and a 23% slope from the primary safety zone to the southeast corner of the secondary fuel break (a 30-foot fall in 130 feet). The appellant's home site and primary safety zone have a slope of 6.4% to the south (a 9-foot fall in 140 feet) and a slope of 9.6% to the southwest corner of the secondary safety zone (a fall of 19 feet in 198 feet); the slope of the secondary fuel break is 11.5% to the southwest (a 15-foot fall in 130 feet -- half the slope of the applicant's site).
- LC 16.211(8)(a)(ii): The appellant's site minimizes intrusion into forest areas by siting the home site and primary safety zone and almost all of the secondary fuel break on the less productive soils; by eliminating the need for a fuel break easement on adjacent forest property with productive soils; and by locating the home site and fuel breaks adjacent to less productive soils on the forest property to the east. No, the northern site would not

intrude upon the forested wildlife corridor to the west of the subject property, because the wildlife corridor was established to permit adjacent clustered homes (as explained above).

- LC 16.211(8)(a)(iii): The appellant's site satisfies this siting standard by locating the home site 100 and 30 feet (130 feet total) from adjacent properties.
- LC 16.211(8)(b): The appellant's site would add about 0.27 acres of land devoted to road access (as you correctly computed on page 10 of your decision, and less than the 20-foot-wide strip the applicant's mistakenly computed). However, this extended driveway could follow the existing logging road, and thereby remove little or no additional forest land from production. As I mentioned in my letters and the 12/4/08 hearing, the applicant has not minimized the amount of forest land committed to his home site; and any land used for a northern home site on less productive soils would have only one third of the impact as the applicant's site. (Also, please remember the appellant's suggested home site was drawn identical in size to the applicant's proposed home site solely for comparison; we do not support the 6400-square-foot homesite proposed by applicant. Nor do we agree with Mr. Lanfear, who in the 12/4/08 hearing said it was a reasonable size because elsewhere in the code on forest zoning there is a provision for a square of 200 feet on a side; if he was referring to LC 16.211(4)(a)(iii), we think it is neither applicable to nor allowed by the LC 16.211(8) siting standards.)
- LC 16.211(8)(d): The applicant has developed an excellent driveway to his proposed site; an extension of 900 feet along the existing logging road to the northern suggested site should provide excellent access for fire and emergency vehicles.

In conclusion, we request your reconsideration of the facts and the goals of the code, and a revised weighing of the siting standards to better meet the goals of the code and the plan.

Respectfully submitted,



Christopher Canfield
Cerro Gordo Community Development Coordinator

cc: Jim Spickerman
Gleaves, Swearingen, Potter & Scott
PO Box 1147, Eugene OR 97440

Cerro Gordo Cooperative, Inc.
c/o Jim Stevenson, Manager
PO Box 164, Cottage Grove OR 97424

MAR 03 2009

Canfield Associates, Oreg. Ltd. COMMUNITY DEVELOPMENT
Dorena Lake, Box 569 Cottage Grove, Oregon 97424 541-942-7720 cerrogordo@igc.org

March 2, 2009

Gary Darnielle, Hearings Official
c/o Jerry Kendall, Associate Planner
Lane County Land Management Division
125 East 8th Ave
Eugene OR 97401

Re: Appeal of PA 08-5840
F2 template dwelling on tax lot 201 of map 20-02-33

Dear Mr. Darnielle:

This letter is written to request clarifications and corrections of statements in your decision dated February 18, 2009. Most can be verified by the evidence in the record. If any new evidence is needed -- such as on-site verification of the site conditions (*e.g.*, slopes, soils and tree cover) -- we ask you to allow the submittal of additional evidence -- and we recommend a site inspection -- to clarify facts and address compliance with the applicable criteria.

This letter is meant to clarify the facts in the record to simplify the appeal process. All of my discussion of the substantive issues of the appeal have already been addressed in my two letters to you dated February 28, 2009.

Enclosed is a copy of your decision. The following comments relate to the highlighted statements.

Application Summary

Mr. Cowan's first application on the subject property was in June 2008 as you indicated. The prior history is as follows:

- 1992 PA 4349-92 was filed on behalf of the property owners, the Kims.
- 1994 PA 4349-92 approved by staff, appealed by Canfield because the template test was missapplied (using average soil productivity and tax lots for seven parcels).
- 1994 9/27/94 staff report for Hearings Official agreed with appellant, prepared new template test for eleven parcels; Hearings Official remanded application to staff.
- 1995 Appellants withdrew appeal because Christensen purchased the property and signed an agreement to relocate the home site to the north end of the property; 1994 Director's approval became effective.
- 1997 Christensen letters to Canfield described financial problems and poor health, asking Canfield to "put everything on hold until you hear from me otherwise"; Canfield responded with annual offers to proceed with agreement, and Christensen obtained annual extensions of 1995 template dwelling approval.

- 2004 Christensen agreed to sell property to Cowan (Shadowbrook),
Canfield recorded a memorandum of his 1995 agreement with Christensen.
- 2007 Canfield filed suit to verify agreement, Christensen sold property to Cowan.
- 2008 Court decided Canfield-Christensen agreement had expired;
1995 approval expired, Cowan filed PA 08-5840 relying on 9/27/94 template test;
Canfield appealed 1994 template test and 2008 application of siting standards.

Findings of Fact

1. You refer to "a portion of Tax Lot 201," but in fact the subject property is all of tax lot 201, created by deed in 1971 as verified by PA 0170-93. PA 3187-96 does not refer to the subject property, but to a portion of tax lot 200.
3. Parcel #4 on the applicant's template test is only a portion of Parcel 3 of Partition M710-77, even if all four parcels of Parcel #4 were reunited.

The appellant's suggested site is predominantly *not* forested. Please confirm this with a site inspection.

The applicant's list of parcels within a 160-acre square is only accurate with its description of parcels "that existed *prior* to January 1, 1993." However, the template test requires a list of parcels which existed *on* January 1, 1993; and on that date Parcel #4 was actually in four separate ownerships, and Parcel #12 did not exist as tax lot 205 (which is now the subject of pending PA 08-6147, based upon a small parcel which has not existed for over 60 years).

5. The appellant did not claim its suggested site was closer to dwellings than the applicant's proposed site; rather, the appellant argued its suggested site was closer to more current and future residences accessed by Ross Lane (currently 12) than the applicant's proposed site is to the 5 (or perhaps 7) residences located along Row River Road. The table is incomplete; it does not include all of the residences along Ross Lane: two duplexes (on tax lots 400 & 401) and two single-family homes (on tax lots 204 & 117). Please see the surveyor's map of the Ross Lane residences (Exhibit E to my 12/22/08 letter).
6. As explained in my 2/28/09 letter, the Cerro Gordo Cooperative did *not* offer access via its private roads "in order to support their contention that the building site should be located there."

Decision

Your addition to the Condition of Approval is much appreciated. However, the wording of the Firebreak Easement allows the current and subsequent owners of the subject property to remove trees "in its discretion . . . on an annual basis" from 1.15 acres of Ritner soil -- including 0.39 acres south of the secondary fuel break. Wouldn't it be more effective to require the easement to be amended to limit its authority and physical area?

Justification for the Decision

You listed three assignments of error, but my 11/5/08 appeal letter listed only two:

- Finding #2 of the Director's decision regarding the template test; and
- Finding #3 of the Director's decision regarding the siting siting standards.

I never questioned the legal lot status of the applicant's property (which you listed as Assignment of Error #2).

Assignment of Error #1: Lane Code 16.211(5)

I listened to the tape of the 12/4/08 hearing to confirm:

- I acknowledged Mr. Lanfear's template test materials delivered 11/26/08, which I described as the third attempt to meet the template test (after the 1992 & 1994 versions) but it was still flawed (not centered on the subject property and including two parcels which I questioned -- #4 & #12).
- I presented a template test map prepared by Jonathan Oakes and me on 12/3/08, which convinced me the template test could be met. I pointed out the code requirement for parcels as they existed on 1/1/93 (not *created prior* to 1993 as stated in the application).
- I explained my objections to counting parcels #4 & #12 and submitted a copy of the *Reeves v. Yamhill County* LUBA case.
- I submitted the Lane Code definitions for parcels, but I did not mention the *Phillips v. Polk County* LUBA case, nor did I raise any objection about property line adjustments (other than my explanation of parcel #12, with its legal lot verification still pending).

Assignment of Error #3: Lane Code 16.211(8)

The slope of the appellant's suggested site is *less* than 10 percent -- not more -- as described in my letter dated 2/28/09. Please confirm this with a site inspection.

The Dixonville-Philomath-Hazelair soils complex are *not* considered to be forest soils under Oregon land use law, as explained in my 2/28/09 letter. Please see the complete Cerro Gordo Non-Resource Land Designation Findings & Conclusions adopted the Board of Commissioners in 1984 as part of the Lane County Rural Comprehensive Plan (copies upon request).

Mr. Lanfear's speculation about the northern portion of the subject property connecting the wildlife corridors on the Cerro Gordo property is not only disputed by the appellant, but contradicted by the Cerro Gordo Wildlife Plan map prepared by wildlife biologist Dick Vander Schaaf and the Cerro Gordo Non-Resource Land Designation Supplemental Findings adopted by the Board of Commissioners (both Exhibit 5 to my 10/3/08 letter) -- neither of which has any requirement or recommendation for connecting wildlife corridors. Please see my 2/28/09 letter.

You quote the applicant's incorrect figures for acreages of the applicant's and appellant's sites.

- The applicant's site and fuel breaks impact 2.65 acres; but if you add the extra 0.39 acres at the southern end of the Firebreak Easement on tax lot 200, the total is 3.04 acres -- all on productive Ritner soil.

- The appellant's site and fuel breaks impact 2.65 acres if the slope is less than ten percent (as I've observed and Chickering-Green mapped). If the slope is more than ten percent as the applicant claims, then the primary safety zone would have to be increased by 50 feet on the southwest slope only -- not the south and west as the applicant computed -- and the site and fuel breaks would measure 340 feet by 390 feet (the latter to the southwest), or 3.04 acres, the same as the applicant's total -- but located on less productive Dixonville-Philomath- Hazelaire soils, thereby reducing the impact on forest growth by 50-60%. The applicant computed 0.47 acres for additional driveway to the appellant's site, mistakenly reading the code to require a 20-foot clearing. You computed 0.27 acres correctly at the top of page 10. (These calculations were explained in my 12/22/08 and 2/28/09 letters.) These same site acreage errors are repeated near the bottom of page 9 and at the top of page 10.

LC 16.211(8)(a)(iii) calls for a setback of "100 and at least 30 feet from the adjoining lines of property zoned F-2," not just 100 feet as you wrote.

Inaccurate information about the slopes on the applicant's and appellant's sites is repeated on page 10. Please see the explanation in my letter dated 2/28/09 and verify the facts on site.

We hope a review of the facts will lead to a revision of your conclusions. Whether it does or not, we appreciate any clarifications or corrections you may provide.

Sincerely,



Christopher Canfield
Cerro Gordo Community Development Coordinator

cc: Jim Spickerman
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Cerro Gordo Cooperative, Inc.
c/o Jim Stevenson, Manager
PO Box 164, Cottage Grove OR 97424

**LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR APPROVAL
OF A SPECIAL USE PERMIT FOR A "TEMPLATE" FOREST DWELLING**

Application Summary

In 1992, Michael Cowan, 33546 Cedar Park Pl., Cottage Grove, OR 97424, requested (PA 4349-02) that the Planning Director approve a special use permit allowing a dwelling in the Impacted Forest Lands (F-2) zone in accordance with the "Template Dwelling" provisions of Lane Code 16.211(5) and as authorized by the Administrative Rule Chapter 660, Division 006 on a portion of Tax Lot 201, Assessor's Map 20-02-33. This application was conditionally approved by the Lane County Planning Director but expired on July 11, 2007. The applicant reapplied on June 26, 2008 and was approved by the Planning Director on October 24, 2008. This approval was appealed in a timely manner by Canfield Associates, Oregon. Ltd. to the Lane County Hearings Official.

Parties of Record

Michael Cowan
Canfield Associates, Oregon

Shadowbrook Inc.
Thom Lanfear

Christopher Canfield

Application History

Hearing Dates: December 4, 2008
 (Record Held Open Until December 29, 2008)

Decision Date: February 18, 2009

Appeal Deadline

An appeal must be filed within 10 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 County Rural Comprehensive Plan
Lane Code 16.211(8)

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," can be identified as a portion of Tax Lot 201, Assessor's Map 20-02-33. The subject

property, which is currently vacant, was first determined to be a legal lot through PA 0170-93 and subsequently through PA 3187-96. It is 15.87 acres in size.

2. The proposed dwelling site is located in an area that consists of a mixture of small-scale forest land properties and parcels zoned RR-10. The site is located in the southeast-central portion of the body of the subject property, about 30 feet from the eastern perimeter of the lot. The proposed homesite will impact 0.45 acres of land (footprint plus primary fuel break).
3. In order to support a "template" single-family dwelling or manufactured home on property zoned F-2 and which is predominately composed of soils capable of producing 85 cubic feet per acre per year of wood fiber, Lane Code 16.211(5)(c)(iii)(aa) requires that the applicant show that 11 or more lots or parcels can be identified within a 160 acre square centered on the subject property. There are at least 11 parcels completely or partially located within a 160-acre square template centered on the subject property. One of the parcels, Parcel #4 as identified on the applicant's parcel template map, may contain several illegal parcels but the parcel itself was created by Partition M710-77 (Parcel 3) and is nevertheless a legal parcel.

The subject property is composed of a mixture of 43C Dixonville-Philomath-Hazelair, which has a capability of 54 cubic feet per acre per year, and 113C&E Ritner, which has a capability of 149 cubic feet per acre per year of wood fiber. Sixty-four percent of the subject property's soils are Ritner and 36 percent are the Dixonville complex. The average productivity of the parcel's soils is 115 cubic feet per acre per year. The site of the proposed dwelling is located on the Ritner soils while the suggested dwelling site is located on the Dixonville complex soils. The suggested dwelling site is forested and is subject to forest management.

Parcels that fall wholly or partially within a 160-acre square centered on the subject property and that existed prior to January 1, 1993 can be identified as follows:

No.	Taxlot	Assessor's Map
1	209	20-02-28
2	500	20-02-28
3	219	20-02-28
4	221	20-02-28
5	102	20-02-32
6	200	20-02-33
7	202	20-02-33
8	203	20-02-33
9	204	20-02-33
10	301	20-02-33

11		Dorena Reservoir
12	205	20-02-33
13	217	20-02-28
14	215	20-02-28

4. Lane Code 16.211(5)(c)(iii)(bb) requires that the applicant show that at least three dwellings or manufactured dwellings existed on January 1, 1993 within the 160-acre square. The parcels upon which these dwellings are located are identified on the applicant's parcel template map.
5. The appellant have posited an alternative dwelling site as being more consistent with the admonition of Lane Code 16.211(8)(a)(i) that the proposed dwelling site be near dwellings or manufactured dwellings on other tracts. The following table compares distances of nearby dwellings with the applicant's proposed and the appellant's suggested dwelling site:

Map & Tax Lot	Distance from Proposed Site	Distance from Suggested Site
20-02-33; #200	900' SE	2000' SE
20-02-33; #203	1400' SW	2400' SW
20-02-28; #208	2600' NE	1900' NE
20-02-28; #211	2500' NE	1850' NE
20-02-28; #500	1800' NW	1300' W
20-02-28; #209	2150' NW	1450' NW

6. The proposed site is immediately adjacent to an existing logging road through the subject property. The dwelling cannot be located within the panhandle access and accommodate fuel breaks. The private road known as Ross Lane is 800 feet from the suggested building site and the applicant currently has no legal right to use it for access. The access from Ross Lane to the northern portion of the subject property does not exist now and Ross Lane is not a public road. The representatives of Cerro Gordo offer road and utility access on this private road to the northern end of the subject property in order to support their contention that the building site should be located there. Ross Lane is a private road approved for use by the Cerro Gordo Cooperative only. Only members of the Cerro Gordo Cooperative, those persons whose properties are encumbered by the many restrictions contained in the Cerro Gordo Charter, may use the road authorized in the Declaration of Private Road recorded in 1985.
7. The appellant's suggested building site is not on the most level part of the property. The most level parts of the tract are located above the panhandle in the southeast portion of the property where the proposed homesite is located. This location is the first level part of

the property closest to the panhandle providing legal road access and nearest to the dwellings on other tracts to the south (tax lot 203) and east (tax lot 200).

Decision

THE DECISION OF THE PLANNING DIRECTOR APPROVING THE COWAN REQUEST (PA 08-5840) FOR A TEMPLATE DWELLING ON TAX LOT 201, ASSESSOR'S MAP 20-02-33 IS AFFIRMED, with the following modification to Condition of Approval #6:

6. The Applicant shall submit a recorded easement allowing the perpetual maintenance of the secondary fuel break on the property adjacent on the east. The removal of vegetation within the secondary fuel break shall be limited to the purpose of this fuel break zone, as explained in LC 16.211(8)(c)(i)(bb), and not for aesthetic purposes.

Justification for the Decision

Lane Code 16.211(5) allows the development of one single-family dwelling or manufactured dwelling on property zoned Impacted Forest Land (F-2) if an applicant meets what is called a "template test." This test requires, among other things, that a tract be lawfully created and that it have no other dwellings on it. Further, if the tract is predominantly composed of soils that are capable of producing 85 cubic feet per acre per year of wood fiber, then it must be shown that there are at least 11 parcels and three dwellings that existed in 1993 that are partially or wholly located within a 160 acre template that is centered on the subject property.

The appellant has identified multiple assignments of error in its appeal of the Planning Director's decision.

Assignment of Error #1: *The parcel count required by Lane Code 16.211(5)(c)(iii)(aa) was not totally comprised of lawful parcels created prior to January 1, 1993.*

Citing the *Reeves* case, the appellant correctly points out that the county may only consider lawfully created lots or parcels when applying the forest "template" dwelling test¹ and cites the definition of "legal lot" found in Lane Code 16.090:

"Legal Lot. A lawfully created lot or parcel. A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are changed or vacated or the lot or parcel is further divided as provided by law."

Regardless of whether some of the lots or parcels being counted may have had their boundaries altered by property line adjustments, the applicant's template analysis is based upon those properties as they existed on January 1, 1993. I do not believe that subsequent property line

¹ *Reeves v. Yamhill County*, 53 Or LUBA 4 (2007)

adjustments, legal or illegal, are relevant to this criterion. It has been noted that at least one of the counted parcels is comprised of illegal parcels. However, the counted parcel was lawfully created through the partitioning process and this circumstance does not thereby make that parcel illegal or uncountable.

The appellant next argues that the property line adjustment(s) recently applied to the subject property violate the precepts announced by LUBA in the *Phillips* case² as applied to sub-minimum sized lots.

Lane County has provided that a legal lot verification is the process through which the legality of the creation and reconfiguration of a unit of land may be determined. Lane Code 13.010 defines a "legal lot verification" as:

"A determination that a unit of land was created in conformance with the Lane Code and other applicable law. A preliminary determination shall only become final when it is made and noticed pursuant to LC 13.020. "

Lane Code 13.020 states:

"A legal lot verification by the Director is considered final when it is made and noticed pursuant to LC 14.100 and shall occur when:

- (1) An application is submitted and reviewed pursuant to LC 14.050, excluding 14.050(3)(c), for a legal lot verification on a lot or parcel resulting from a property line adjustment; or*
- (2) If notice is requested by the property owner for any legal lot verification, upon submitting an application for review pursuant to LC 14.050, excluding 14.050(3)(c). "*

The property line adjustments of the subject property were noticed as land use decisions³ and were not challenged. I do not believe that they can be collaterally attacked in this proceeding.

This allegation of error is dismissed.

Assignment of Error #2: *A template dwelling may not be approved because the subject property is not a legal lot.*

The subject property was the subject of legal lot verification PA 0170-93. Subsequent to the filing of the appeal, the appellant has stipulated that the subject property is a legal lot.

² *Phillips v. Polk County*, 213 Or.App. 498, rev. denied 344 Or. 43 (2008)

³ See PA 06-6550 and PA 07-5084.

Assignment of Error #3: *The Planning Director did not properly apply Lane Code 16.211(8) to the application.*

This issue is the heart of the appeal. The appellant believes that the template dwelling should be located at the north end of subject property while the applicant proposes to site the dwelling on the southeast portion of the property, much closer to Row River Road. The siting standards of Lane Code 16.211(8) are intended to guide the placement of the template dwelling

- (8) ***Siting Standards for Dwellings, Structures and Other Uses. The following siting standards shall apply to all new dwellings, manufactured dwellings and structures, and other uses as specified above in LC 16.211(2)(h) and (j), and in LC 16.211(3) through (7) above. These standards are designed to make use uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. The standards in LC 16.211(8)(a)–through (b) below shall be weighed together with the requirements in LC 16.211(8)(c) and (e) below to identify the building site.***

- (a) ***Setbacks. Residences, dwellings or manufactured dwellings and structures shall be sited as follows:***

- (i) ***Near dwellings of manufactured dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or slope greater than 40 percent;***

Near Dwellings. Two dwellings are located within 1400 feet of the site proposed by the applicant, one of which is located 900 feet from the site. One dwelling is located 1300 feet from the site suggested by the appellant. The three dwellings closest to the site proposed by the applicant average about 1,367 feet from that location and the three dwellings closest to the site suggested by the appellant average about 1,516 feet from that location. None of these dwellings can be considered to be “close” to either site and it is clear that there is no meaningful clustering of dwellings in any case. Given the fact that the nearest dwelling is closer to the applicant’s proposed site than to the appellant’s suggested site and, on the average there are three dwellings closer to the former than to the latter, the site proposed by the applicant appears to best satisfy this criterion.

Level part of the tract. The applicant’s proposed dwelling site is located on nearly level ground that is the closest such ground to Row River Road. It is also the most level part of the tract nearest to the dwellings on other tracts to the south (tax lot 203) and east (tax lot 200). The site suggested by the appellant is located on a southwest slope greater than 10 percent.

Areas that exceed 10 percent are subject to the creation of increased fire breaks in the downslope direction by Lane Code 16.211(8) (c)(i)(aa). The site proposed by the applicant appears to best satisfy this criterion.

Least suitable portion of the tract. The site proposed by the applicant is occupied by Rittner Soils that has a forest productivity rating of 149 cubic feet per acre per year. The site suggested by the appellant is occupied by Dixonville-Philomath-Hazelair complex soils that has an estimated forest productivity rating of 45 cubic feet per acre per year. These latter soils are considered to be forest soils.

The National Resources Conservation Service (NRCS) description of the Rittner soil notes that one limitation is that it may be shallow to bedrock, limiting tree growth. In the present case, an expert forester has examined the site chosen by the applicant and found it to be a rocky bluff, with a high rock content that creates very shallow rooting conditions. The apparent higher productivity of the Rittner soils mapping lessens upon a thorough site investigation although the applicant's forester did not attach a revised soil productivity figure to the proposed dwelling site but did conclude that the differences in productivity were "largely mitigated."

Forest use also includes other activities such as wildlife habitat. In this context, the site suggested by the appellant lies immediately between two animal corridors and, it is argued, would diminish the connectivity between these two wildlife areas. This point was not disputed by the appellant and therefore is assumed to be valid.

At least 30 feet away from any ravine, ridge or slope greater than 40 percent. Neither site is located near a ravine, ridge or slope that is greater than 40 percent.

(ii) *With minimal intrusion into forest areas undeveloped by non-forest uses.*

The homesite and primary fuel break proposed by the applicant will impact 0.45 acres and the development of the secondary fuel break will increase than amount to 2.65 acres. This location has an access road that extends from Row River Road to the homesite.

The homesite suggested by the appellant is located on a sloped, forested area. This site would require an additional 50-feet of primary safety zone in the downslope direction and an associated larger secondary fuel break. The homesite and primary fuel break would impact 0.83 acres and the

development of the secondary fuel break would increase that amount to 3.49 acres. This homesite would require additional road development of about 0.47 acres.

The appellant's forester has suggested that the secondary fuel break associated with the applicant's proposed site will have a greater adverse impact on forest productivity than the appellant's suggested site. The reasoning is that the goals of maintaining a commercial tree operation and applying the actions necessary for secondary fuel break management are not compatible; that is, the latter activities will severely compromise the commercial potential of that stand of trees. The applicant's forester agrees that the secondary fuel break will reduce productivity but not to the degree suggested by the appellant's forester. The former suggests two industry-accepted methods of reducing the undesirable growth of tree limbs, which requires larger spacing between tree crowns. This forester likens the increased management burden as being equal to keeping a large landscaped yard trimmed and this analogy was not disputed.

The analysis does not seem to clearly favor either site. While the location of the dwelling suggested by the appellant, including fuel breaks and access road, would occupy about 0.9 acres more than the location proposed by the applicant, the impact of the secondary fuel break in that location would have less consequence because of the lower soil productivity.

- (iii) *Where possible, when considering LC 16.2100(8)(a)(i) and (ii) above and the dimensions and topography of the tract, at least 500 feet from the adjoining lines of property zoned F-1 and at least 100 feet from property zoned F-2 or EFU; and*

Both the site proposed by the applicant and the site suggested by the appellant are more than 500 feet from property zoned F-1. The site suggested by the appellant is over 100 feet from all property zoned F-2 or EFU. The site proposed by the applicant is 30 feet from property zoned F-2 and more than 100 feet from property zoned EFU.

- (iv) *Except for property located between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries, where setbacks are provided and in LC 16.253(6), the riparian setback area shall be the area between a line 100 feet above and parallel to the ordinary high water of a Class I stream designated for riparian vegetation protection in the Rural Comprehensive Plan. No structure other than a fence shall be located*

closer than 100 feet from ordinary high water of a Class I stream designated for riparian vegetation protection by the Rural Comprehensive Plan. A modification to the riparian setback standard for a structure may be allowed provided the requirements of LC 16.253(3) or LC 16.253(6), as applicable, are met; and

Neither site is located closer than 100 feet from the ordinary high water line of a Class I stream.

(v) *Structures other than a fence or sign shall not be located closer than:*

(aa) *20 feet from the right-of-way of a state road, County road or a local access public road specified in Lane Code LC Chapter 15; and*

Both of the sites comply with this standard.

(bb) *30 feet from all other property lines; and*

The site proposed by the applicant is 30 feet from the nearest property line and the site suggested by the appellant is 130 feet from the nearest property line. Both sites comply with this standard.

(cc) *The minimum distance necessary to comply with LC 16.211(8)(a) above and LC 16.211(8)(b) through (d) below.*

See analysis below.

(b) *The amount of forest lands used to site access roads, service corridors and structures shall be minimized.*

The site proposed by the applicant requires the development of a 1,768-foot long driveway from Row River Road. This driveway would be 12 feet wide, would require four 20-foot long by 8-foot wide turnouts for emergency vehicle access and would occupy about 0.5 acres of land. The amount of land necessary to accommodate the proposed dwelling and fire breaks is about 2.65 acres.

The site suggested by the appellant is 800 feet from Ross Lane, a private road that currently provides access to 12 dwellings, and is 2,700-feet from Row River Road. However, the applicant does not have a legal right of access to the former road and acquiring this right would apparently necessitate acceptance of the many restrictions contained in the Cerro Gordo Charter. A driveway to Row River Road

from this location would be 12 feet wide, would require six 20-foot long by 8-foot wide turnouts for emergency vehicle access and would occupy about 0.77 acres of land. The amount of land necessary to accommodate the proposed dwelling and fire breaks is about 3.49 acres.

(c) ***Fire Siting Standards. The following fire-siting standards or their equivalent shall apply to new residences, dwellings, manufactured dwellings or structures:***

- (i) ***Fuel-Free Breaks. The owners of dwellings, manufactured dwellings and structures shall maintain a primary safety zone surrounding all structures and clear and maintain a secondary fuel break on land surrounding the dwelling or manufactured dwelling that is owned or controlled by the owner in compliance with these requirements.***

(aa) ***Primary Safety Zone***

Because the site proposed by the applicant is on level ground, the primary safety zone is 30 feet and can be accommodated on the subject property.

The site suggested by the appellant is on a slope in excess of 10 percent and will require an additional 50-feet of primary safety zone in the downslope direction.

(bb) ***Secondary Fuel Break***

The site proposed by the applicant can accommodate the secondary fuel break standard of 100 feet in all directions around the primary safety zone except on the east. A firebreak easement agreement has been recorded that burdens tax lot 200, adjacent on the east, and that allows the clearing and maintenance of the secondary fuel break by the applicant on tax lot 200. I tend to agree with the appellant, however, regarding the open-ended language of the easement in regard to the applicant's discretion to cut trees in this area. This discretion is tightened in the conditions approval. On the other hand, the concern that the applicant will use the lake viewshed as a determinate factor in the management of the secondary fuel break does not appear to be logical as it appears that tree cutting outside of the fuel break area would be necessary in order to maintain the view of the lake from the proposed dwelling site.

The site suggested by the appellant can accommodate a 100-foot secondary fuel break on the subject property.

- (ii) ***Structural Fire Protection.*** *The dwelling or manufactured dwelling shall be located on a parcel within a fire protection district or shall be provided with residential fire protection as evidenced by a long term contract with a fire protection district (FPD) recorded in Lane County Deeds and Records. ...*

The site proposed by the applicant was annexed into the South Lane Fire Protection District on April 18, 1995. The site suggested by the appellant was previously located within that district.

- (d) ***Domestic Water Supplies.*** *Evidence shall be provided that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices Rule, OAR Chapter 629. If the water supply is unavailable from public sources or sources located entirely on the property, then the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners. ...*

This standard was not involved in the allegations of error.

- (e) ***Fire Safety Design Standards for Roads and Driveways.*** *Private driveways, roads or bridges accessing only commercial forest uses are not subject to compliance with these fire safety design standards for roads and driveways. The route of access for fire fighting equipment, from the fire station to the destination point, across public roads, bridges, private roads or private access easements and driveways shall comply with the standards specified below in LC 16.211(8)(e). Evidence of compliance with the standards specified in LC 16.211(8)(e) below should include objective information about the fire fighting equipment, the physical nature of the access route, the nature of any proposed improvements to the access route, and it may also include a written verification of compliance from the agency providing fire protection, or a written certification of compliance from an Oregon Registered Professional Engineer. As used herein, "road" means a way of access used for more than one use and accessory uses dwelling or manufactured dwelling. As used herein, "driveway" means a way of access used for only one dwelling or manufactured dwelling.*

The subject property is accessed by Row River Road, a paved County Road that extends from the City of Cottage Grove. The route of travel from the fire station

at 233 Harrison St in Cottage Grove to the legal access to the property on Row River Road consists entirely of paved publicly maintained roads. A letter from the South Lane Fire Protection District confirms adequate access to the property. Traveling from Row River Road, the fire vehicles would reach the site proposed by the applicant first as it is about 1,000 feet closer to the public road than the site suggested by the appellant.

Conclusion

The analysis under Lane Code 16.211(8) is rarely straightforward and this application is no exception. First, the Code requires that the standards of Lane Code 16.211(8)(a) & (b) be weighed together with the requirements of Lane Code 16.211(8)(c) and (e). It appears that the applicant's proposed site more closely complies with 16.211(8)(a) & (b) as it is closest to an existing dwelling (900 feet) and three existing dwellings (an average of 1,367 feet) and is on the most level ground, an important determinate of fire hazard. Neither dwelling site is located near a ravine, ridge or slope in excess of 40 percent. The question of the which site is less suitable is a toss up as the rocky soil conditions of the applicant's proposed site do not completely mitigate its better soils in regard to commercial productivity but the location of appellant's suggested site is less suitable to the forest use of wildlife habitat. The applicant's proposed site is less intrusive into forest areas undeveloped by non-forest uses, primarily because of its larger fuel break area and longer access road but the site suggested by the appellant completely satisfies the requirement of Lane Code 16.211(8)(a)(iii). On the whole, the applicant's proposed site seems to be marginally more consistent with the criteria embodied in Lane Code 16.211(8)(a).

Lane Code Lane Code 16.211(8)(b) is concerned with the minimization of the amount of forest land used to site access roads, service corridors and structures. Assuming that access must be from Row River Road, the footprint of the applicant's proposed site is the smallest.

Both dwelling sites can meet the criteria of Lane Code 16.211(8)(c), albeit the applicant must utilize a portion of the adjacent property to the east for secondary fuel break purposes. And consistent with Lane Code 16.211(8)(e), both dwelling sites have access to fire protection via Row River Road and apparently there is no serious issue of whether the driveway from Row River Road can be constructed to comply with the fire safety design standards of the Lane Code. No information was provided about slopes or other impediments to meeting the fire safety design standards that might be associated with accessing Ross Lane to serve the appellant's suggested site.

Balancing Lane Code 16.211(8)(a) and (b) together, and then with Lane Code 16.211(8)(c) and (e), it would appear that the preponderance of the evidence supports a conclusion that the applicant's proposed dwelling site is most consistent with the standards embodied in those criteria. And there certainly is insufficient evidence in the whole record to conclude that the Planning Director's determination of this fact was clearly wrong.

Therefore, the Planning Director's approval of this application, as slightly modified, is affirmed.

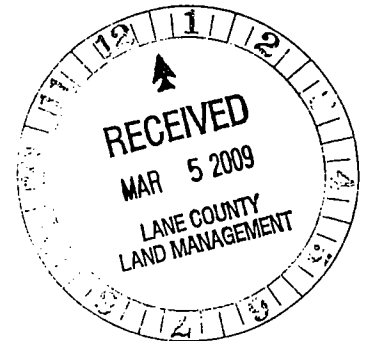
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary Darnielle", written over a horizontal line.

Gary Darnielle
Lane County Hearings Official

March 4, 2009

Gary Darnielle, Hearings Official
c/o Jerry Kendall, Associate Planner
Lane County Land Management Division
125 East 8th Ave
Eugene OR 97401



Re: Appeal of PA 08-5840
F2 template dwelling on tax lot 201 of map 20-02-33

Dear Mr. Darnielle:

My land use attorney Jim Spickerman has suggested one additional point for your consideration (he was out of town until yesterday and did not see until today your decision dated February 18th or my responses dated February 28th and March 2nd).

At the bottom of page 12 of your decision you wrote: "And there certainly is insufficient evidence in the whole record to conclude that the Planning Director's determination of this fact was clearly wrong."

Mr. Spickerman responded: "This is not the standard. The Hearings Official is to give no deference to the Planning Director's decision. The Hearings Official's review is a *de novo* one; he is to make an independent determination, making a decision based upon a preponderance of the evidence, as he, independently, finds it to be." Mr. Spickerman cited *Burgeß v. City of Corvallis*, LUBA No. 2007-060 1/2/2008, at pages 5-9.

Mr. Spickerman added: "It is well established law that the burden of proof concerning compliance with all applicable approval criteria rests with the applicant throughout the local appeals process." He cited *Strawn v. City of Albany*, 20 Or LUBA 344, 350-351 (1990); *Mohler v. Josephine County*, 26 Or LUBA 1, 5 (1993); and *Andrews v. City of Prineville*, 28 Or LUBA 653, 659 (1995).

Mr. Spickerman also noted: "The language regarding the Planning Director's decision or fact not being 'clearly wrong' draws from language in cases interpreting the deference required of LUBA in reviewing decisions by a local governing body (a board of commissioners or city council) pursuant to ORS 197.829. It has no application here."

Gary Darnielle, Hearings Official
c/o Jerry Kendall, Associate Planner
Lane County Land Management Division
March 4, 2009
Page 2

We would request that you re-evaluate the evidence without giving deference to the Planning Director's administrative decision.

Thank you for your consideration.

Sincerely,

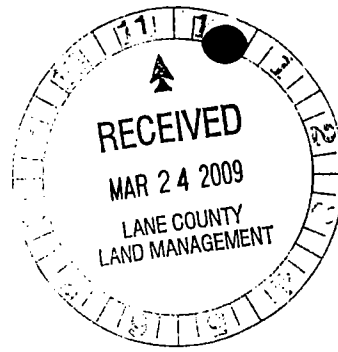


Christopher Canfield
Cerro Gordo Community Development Coordinator

cc: Jim Spickerman
Gleaves, Swearingen, Potter & Scott
PO Box 1147, Eugene OR 97440

Cerro Gordo Cooperative, Inc.
c/o Jim Stevenson, Manager
PO Box 164, Cottage Grove OR 97424

Thom Lanfear
Lanfear Consulting, LLC
541 Willamette St., #401, Eugene OR 97401



LANFEAR
CONSULTING
LLC

March 24, 2009

Board of County Commissioners
C/o Jerry Kendall, Associate Planner
Lane County Land Management Division
125 East 8th Avenue
Eugene, OR 97401

Re: Appeal of Hearings Official Decision
Department File: PA 08-5840

Dear Commissioners:

This letter is written on behalf of the applicant, Michael Cowan, in response to the appeal of the Hearings Official decision PA 08-5940 submitted by Canfield Associates. We respectfully request that the Board not hear the appeal and affirm the Hearings Official and Planning Director approvals.

Both the Planning Director and the Hearings Official have evaluated and approved the proposal to construct a dwelling within the Impacted Forest Lands (F-2) Zone using the "template dwelling" criteria. The sole substantive issue contested in the appeal involves the determination of the most appropriate dwelling site on the property. The appellant does not contest the applicant's right to a dwelling, only its location. The applicant has appropriately balanced the siting standards of the F-2 Zone [LC 16.211(8)] to identify the best location for the dwelling on the property. The suitability of the applicant's dwelling location has been affirmed by the Hearings Official after weighing all of the evidence in the record which included on-site evaluation of the dwelling site and the property's forest resources by a professional forester. The dwelling site proposed by the appellant would require almost 1000 feet of additional driveway to be constructed into the forest lands and impact a greater area for the creation of fire breaks.

The appeal fails to meet the criteria of Lane Code 16.400(3) below necessary for the Board to hear the appeal:

(a) The issue is of Countywide significance.

The appeal is limited to the specific siting of a dwelling on the subject property.

(b) The issue will reoccur with frequency and there is a need for policy guidance.

The siting standards of the F-2 Zone have been applied on a site specific basis consistently for almost 20 years. No policy guidance is needed.

(c) The issue involves a unique environmental resource.

The site is zoned Impacted Forest Lands (F-2). No unique resource has been identified in proximity to the subject property.

(d) The Planning Director or Hearings Official recommends review.

The decisions by the Planning Director and the Hearings Official are consistent and do not identify any issues which require Board involvement.

If the Board decides to hear the appeal, the applicant requests that the matter be limited to a hearing on the record. The opening of the record to admit new evidence would only prolong the resolution of this matter which could be appealed to the Land Use Board of Appeals (LUBA).

Thank you for your thoughtful attention to this matter.

Sincerely,



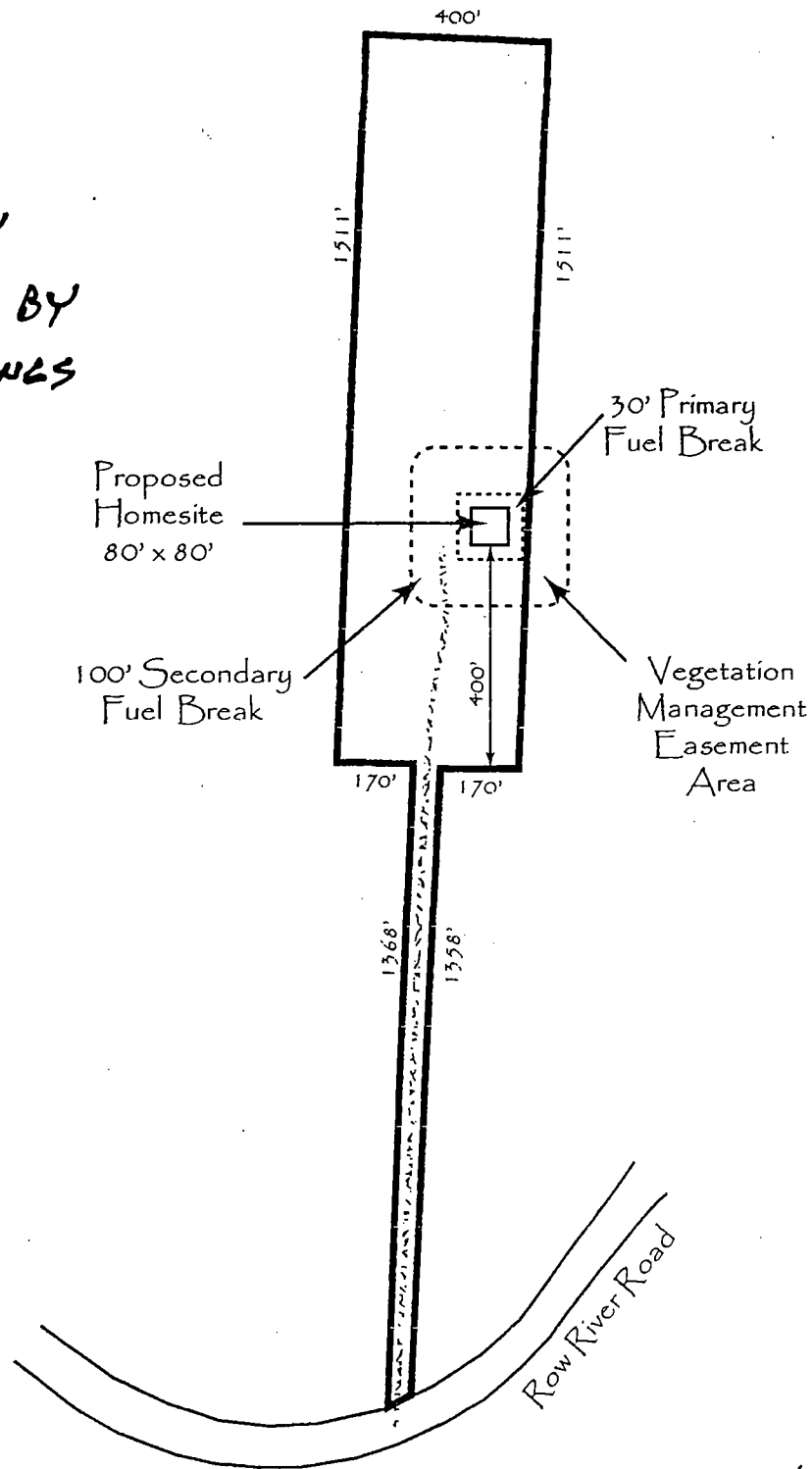
Thom Lanfear
Lanfear Consulting LLC

cc. Michael Cowan
Bill Van Vactor

Site Plan

Map 20-02-33 #201

SITE PLAN
APPROVED BY
THE HEARINGS
OFFICIAL



Scale

1 inch = 400 feet

EXHIBIT

ATTACHMENT 4

