

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. 96- 4-2-9

) IN THE MATTER OF ADOPTING
) FINDINGS AND A FINAL DECISION ON
) THE APPEAL OF THE HEARINGS
) OFFICIAL DENIAL OF PA 0518-93 FOR
) CONFIRMATION OF A VESTED RIGHT
) TO LOCATE A MOBILE HOME WITHIN
) AN IMPACTED FOREST LANDS (F-2)
) ZONE ON TAX LOT 600, ASSESSOR'S
) MAP 16-04-14.
) (APPELLANT/APPLICANT: MILLARD)

FILED

APR 03 1996

COUNTY CLERK

BY *Pam DeWille*

WHEREAS, the Lane County Hearings Official has made a decision on application PA 0518-93; and

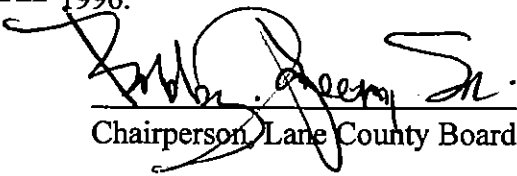
WHEREAS, the Lane County Board of County Commissioners has elected to hear an appeal of the Hearings Official Decision pursuant to LC 14.600(4); and

WHEREAS, the Board of County Commissioners has reviewed this matter at a public meeting on August 25, 1993, heard argument on October 13, 1993, tentatively reversed the Hearings Official, directed preparation of findings by applicant's representative and is now ready to take action;

NOW THEREFORE, the Board of County Commissioners finds and orders as follows:

1. The appeal is hereby granted and the Hearings Official's decision affirming the Director's decision denying the above referenced request is reversed.
2. The request to confirm a vested right to locate a mobile home within an Impacted Forest Lands zone on Tax Lot 600, Assessor's Map 16-04-14 is approved.
3. Findings in support of this decision are attached as Exhibit A.

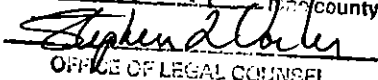
ADOPTED this 2nd day of April 1996.



Chairperson Lane County Board of Commissioners

APPROVED AS TO FORM

Date 3-11-96 Lane County


OFFICE OF LEGAL COUNSEL

Findings of Fact

BOOK 157 PAGE 1570

The Board adopts these findings in support of reversing the Hearings Official's decision affirming the Director's decision denying the Millard request (PA 0158-93) for confirmation of a vested right and to grant that request to locate a mobile home within an Impacted Forest Lands (F-2) zone on Tax Lot 600, Assessor's Map 16-06-14.

1. The property, which is the subject of this application, hereinafter referred to as the "subject property," has a street address of Templeton Road, Cheshire, Oregon. It may also be referred to as tax lot 600, assessor's map 16-06-14, and a portion of tax lot 301, assessor's map 16-04-11. The subject property is located on the north and south sides of Templeton Road, northwest of its intersection with Hall Road, west of the community of Cheshire.
2. The subject property is approximately rectangular in shape and contains 51.04 acres, 26.84 acres in tax lot 600 and 24.2 acres in tax lot 301. It is presently improved with a barn, shop, well, pump house, septic system, mobile home site and gravel driveway. The mobile home site is located on the portion of tax lot 600 north of Templeton Road, as are the other improvements.
3. A mobile home was located on the property in early 1979, and was used as the residence of applicant Ruth Millard. In connection with placing the mobile home on the subject property, a well, pump house, septic system, and driveway were constructed and electricity extended to the subject property. In August 1983, she removed the mobile home from the subject property and placed it near her son's home in Springfield for health reasons. The subject property has not been used for residential purposes since that time, but the applicant has incurred expenses to maintain the improvements on it, including the electrical and water systems, and to mow grass and weeds. The evidence indicates that some agricultural activity occurs on the subject property, as well as on neighboring properties.
4. At the time the mobile home was originally placed on the subject property, tax lot 600 (where the mobile home site is located) was unzoned. On November 8, 1979, tax lot 600 was zoned FF-20, which zoning allowed mobile homes as a permitted use. After the mobile home was removed from the subject property in 1983, on September 8, 1984, the entirety of the subject property was rezoned F-2 (Impacted Forest Lands). Tax lot 301 was rezoned again on September 12, 1984, to F-1 (Nonimpacted Forest Lands). These are the zoning classifications which have continued in effect on the subject property to the present time.
5. The applicant now requests confirmation of a vested right to place a mobile home on the subject property.

Decision

THE DECISION OF THE HEARINGS OFFICIAL IS REVERSED. THE REQUEST FOR CONFIRMATION OF VESTED RIGHT TO PLACE A MOBILE HOME ON TAX LOT 600, ASSESSOR'S MAP 16-06-14, IS APPROVED.

Basis for the Decision

Lane Code Criteria

This application presents a factual situation apparently unlike that encountered in any previously reported case. In 1979, when applicant Ruth Millard placed a mobile home on the subject property, no planning approvals for doing so were necessary. When the property was first zoned later in 1979, placing a mobile home on the property was a permitted use. The applicant removed the mobile home from the site in 1983 temporarily, while it was still a permitted use. The zoning for the property changed in 1984, after the mobile home was removed, which would require a permit for placing a mobile home on the subject property. Those zoning restrictions are still in place, and the applicant now desires to again place a mobile home on the subject property as permitted at the time it was removed temporarily.

The Planning Director's denial of the application was based on its failure to meet the criteria for confirmation of a nonconforming use. The applicant's appeal took the position that those criteria were inapplicable because the application was for confirmation of a vested right, and at the hearing before the Hearings Official, the Director acceded to this position. Since the residential use did not continue on the subject property, the Hearings Official agreed that applying the nonconforming use criteria would be inapposite. The issue before the Hearings Official was whether these facts can give rise to a vested right.

Based on the language in Lane Code 16.251(4), Lane County has previously made vested rights determinations in accordance with the criteria described in Clackamas County v. Holmes, 265 Or 193, 508 P2d 190 (1973). Magnuson, PA 0176-91 (May 27, 1991). However, as was the case in Holmes, a vested right is usually associated with the permitting and construction process; the determination is based on whether these preparatory activities have progressed so far as to allow the intended activity even though zoning laws enacted after the start of these activity but before the use is commenced would prohibit it. No vested rights case has described a situation where the use began but was interrupted before the change in zoning law took place. This case thus presents the issue of whether a vested right still exists when the desired use of the property ceased temporarily before the zoning ordinance restricting that use became effective.

The Hearings Official's decision affirming the Planning Director's denial of the above requested confirmation of a vested right, dated August 2, 1993, relied in large part upon his interpretation of nonconforming use law. He reasoned that this discontinuance of the use destroyed the vested nature of the utilities and home site that were in place at the time that the mobile home was removed. In effect, he did not give any weight to the applicant's maintenance of those facilities throughout the time the mobile home was removed. This included the well, pump house, electricity, septic system and driveway. Finally, even though he relies on nonconforming use

law, he also acknowledged the vested rights criteria in Holmes were the relevant standards. Consequently, reliance on nonconforming use law is inapplicable to the unique factual circumstances involved in this appeal. The Board concludes that the Hearings Official erred by relying upon non-conforming use law in this case.

The Board rejects the Hearings Official's reliance upon nonconforming use law based on previous decisions made by the Board. The Board has determined that once a vested right is created, and even though nonconforming use law is not directly applicable, that vested right is not divested nor is it extinguished unless there are facts that evidence abandonment on the part of the holder of the vested right. Mere cessation of the use is not evidence of that intent. The intent to maintain the right can be demonstrated through affirmative steps to complete and continue the exercise of that right, including the maintenance of the facilities and services that support the use.

In this particular case, it is particularly relevant that the driveway, electricity, water and septic system were maintained by the applicant even though the mobile home was temporarily removed. The applicant's testimony further supported her intent to maintain the use. Further, the applicant's testimony indicated that it was circumstances beyond her control that prompted her to remove the mobile home temporarily and interrupted her plans to return the mobile home to the site. The Board members concluded that this particular decision should be confined to mobile homes and that factual circumstances involving removal of stick-built homes needed to be evaluated separately.

The Board found that the factual circumstances surrounding each particular application are extremely relevant. Further, the Board determined that those factual circumstances could not be altered retroactively in hopes of resurrecting a vested right when there had been no previous attempt or intent to maintain the right. For that reason, the Board believed that the impact of its decision in this case would have minimal precedential effect.

Consequently, the policy arising from the Board's review of this matter involved first recognizing that the issue of intent and abandonment of the vested right is an issue of fact that is peculiar to each particular situation. Further, a mobile home is different than a stick-built home in circumstances involving vested rights. In this particular instance, there was clear, objective evidence that the facilities and services that supported the mobile home use were maintained by the applicant. This leads to a conclusion that there was always an intent to return the mobile home to the site. For that reason, the vested right to relocate the mobile home is maintained, even though the use has temporarily ceased.

The applicant was further directed to address the criteria in the Holmes case, particularly the ratio criterion that compares the expenditures made to the total project cost.

In Clackamas County v. Holmes, supra, the Oregon Supreme Court set forth several tests for determining whether a land owner has a vested right to complete a project once expenditures have been made towards that project. One of the primary tests was to compare the ratio of expenditures incurred to the total cost of the project. In this particular instance, there is evidence

in the record submitted by the applicant, and identified in a June 30, 1993 letter from the applicant's representative to the Planning Department, that costs have been incurred in the amount of \$4,876.90. These costs were directed towards the following:

Septic site approval	\$75.00
Permit fee	66.90
Permit fee for the water supply system	20.00
Well	1,100.00
Pump and water system	750.00
Pump house	200.00
Septic house and drainfield	2,500.00
Gravel for the homesite	75.00
Meter base, pedestal and box	90.00

There was further testimony that the initial cost of the removed mobile home was \$8,000, which would make a total project cost of \$12,876.90. This would bring the ratio of expenditures to total project cost well within the Holmes ratio of 1 to 14 for placement of a mobile home.

Also in Holmes, other factors were cited including the good faith of the landowner, whether there was notice of any proposed zoning or code amendments before starting the improvements, the type of expenditures and the type of work conducted by the landowner. In this particular instance, there was clear testimony and findings that the mobile home was placed on the property in 1979, well ahead of any zoning being applied to the property. Further, the applicant did proceed in good faith under the laws existing at the time the mobile home was placed on the property. The expenditures did arise above mere contemplation in that a water system, septic system, driveway improvements and electricity were all installed in support of the mobile home. These facilities continued to be maintained even after the mobile home was removed.

Conclusion

Based on the findings and interpretations set forth above, the Board finds that the applicant's request for confirmation of a vested right to place a mobile home on property zoned F-2, Impacted Forest Lands should be granted and a mobile home allowed to be placed on the property on the same site as the original placement.