

FILED

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

SEP 26 1995

COUNTY CLERK

BY Brian DeWille

ORDER NO. 95-9-20-6

-) In The Matter of Electing Whether
-) or Not to Hear an Appeal of a
-) Hearings Official Decision
-) Affirming the Planning Director's
-) Decision Denying a Request to Allow
-) a Dwelling Within an Impacted
-) Forest Land Zone District
-) (PA1990-92, Bruce Morgan).

WHEREAS, on August 7, 1995, the Lane County Hearings Official made a decision on application PA 1990-92; and

WHEREAS, on August 16, 1995, the Lane County Planning Director accepted an appeal of the Hearings Official's Decision to the Board of County Commissioners pursuant to LC 14.515; and

WHEREAS, on August 23, 1995, the Lane County Hearings Official affirmed his decision on application PA 1990-92; and

WHEREAS, Lane Code 14.600 provides the procedure and criteria for which the Board shall follow 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 on September 20, 1995; NOW

THEREFORE, BE IT ORDERED the Board of County Commissioners of Lane County finds that the appeal does not comply with the criteria of Lane Code Chapter 14.600(3) and should therefore not be considered. Findings in support of this decision are attached as Exhibit "A".

DATED this 20th day of September, 1995.

Ellie Jundi

Chairperson, Lane County Board of Commissioners

APPROVED AS TO FORM

Date 9-12-95 Lane County

Stephen J. Under
OFFICE OF LEGAL COUNSEL

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Findings In Support of Order No. 95-9-20-6 .

1. The subject parcel is owned by Bruce Morgan, contains approximately 21 acres, is located seven miles north of the city limits of Springfield in the vicinity of the one mile marker and on the south side of Sunderman Road.
2. In 1984, the subject property was designated for forest use in the Rural Comprehensive Plan and zoned Impacted Forest Land (F2).
3. On June 19, 1992, Bruce Morgan submitted a Land Use Application (PA1990-92) requesting consideration by the Planning Director to allow a dwelling not related to forest management on the subject parcel pursuant to Lane Code 16.211(7) and (8) criteria and standards.
4. On November 30, 1992, the Planning Director approved with conditions PA1990-92 to allow a dwelling not related to forest management on the subject parcel and gave notice to all property owners within 500 feet of the subject parcel.
5. On December 11, 1992, the Planning Director's decision was appealed (Hart and Halladey) to the Lane County Hearings Official.
6. On January 21, 1993, the Hearings Official held a de novo hearing and received testimony from the applicant, the appellants, and their representatives.
7. On February 16, 1993, the Hearings Official overturned the Planning Director's decision and denied the applicant's request for a dwelling on the basis of noncompliance with LC 16.211(7) (i).
8. On February 26, 1993, the Applicant (Morgan/Gillis) appealed Hearings Official Decision to the Lane County Board of Commissioners.
9. On March 1, 1993, the Hearings Official elected to reconsider February 16, 1993 decision.
10. On March 15, 1993, the Hearings Official issued reconsidered decision affirming his denial of February 16, 1993 and expressed option to remand his reconsidered decision to the Planning Director to provide an option for the applicant to supplement the record with additional documentation regarding legal access to the subject parcel. Documentation would be in the nature of either a negotiated settlement between the applicant and the appellants, or a Circuit Court decision addressing the access issue.
11. On March 29, 1993, the Planning Director notified applicant and appellants that the remand option was acceptable.

12. On March 29, 1993, the Applicant accepted the remand option and withdrew appeal. An initial timeline of September 30, 1993, was granted by the Planning Director and agreed to by the applicant to allow for negotiations.
13. On September 13, 1993, the Applicant requested additional time to continue negotiations. An extension was granted by the Planning Director to November 15, 1993.
14. On October 21, 1993, the Applicant's attorney (Gillis) requested a third extension to allow for pretrial and litigation in Lane County Circuit Court with an anticipated docket date of May or June 1994.
15. On October 25, 1993, an indefinite time extension was granted by the Planning Director in acknowledgment of the pending litigation. A reasonable period of time for negotiations was anticipated by the Hearings Official and the Planning Director in initially granting the option to the applicant and appellants to settle the access issue. After it became obvious that litigation would be necessary to settle the differences, it was likewise anticipated that the Circuit Court docket and the concerned parties' actions would lead to a timely judgment.
16. On November 28, 1994, the Planning Director terminated the extension without prejudice to the applicant's interests or future efforts to resolve the access issues and the future option to submit a request for a dwelling on the subject parcel pursuant to OAR 660-06-027 criteria and standards.
17. On November 28, 1994, notice of the Planning Director's November 28, 1994 decision was provided to the applicant (Morgan), appellants (Hart and Halleday), applicant's attorney (Gillis), and appellant's attorney (Waldrop).
18. On June 9, 1995, the Planning Director gave notice of the November 28, 1994, decision denying the applicant's request for a dwelling to the legal owners of all properties within 500 feet of the exterior boundaries of the applicant's contiguous ownership including the subject parcel.
19. On June 14, 1995, the Applicant (Morgan/Gillis) appealed the Planning Director's decision to the Hearings Official and the appeal is received and accepted.
20. On August 3, 1995, the Hearings Official held a de novo hearing and received testimony from the applicant, the appellants, and their representatives.
21. On August 7, 1995, the Hearings Official affirmed the Planning Director's decision denying the applicant's request for a dwelling on the basis of noncompliance with LC 16.211(7)(i).
22. On August 16, 1995, an appeal of the Hearings Official decision was

received and accepted by Land Management Division.

23. On August 17, 1995, a copy of the appeal was provided to the Hearings Official.
24. On August 23, 1995, the Hearings Official provided written notice to the Planning Director affirming the August 7, 1995 decision, elected to not reconsider the August 7, 1995 decision, and issued a clarification addressing issues raised in the Morgan/Gillis appeal.
25. On August 29, 1995, Land Management Division mailed notice of the acceptance of the appeal and Hearings Official affirmation.
26. The Hearings Official reviewed the decision and the appeal and determined that he did not concur with the appellant's allegations that the Hearings Official exceeded his authority, failed to follow procedure applicable to the matter, or misinterpreted the Lane Code or Manual, state law or other applicable criteria, and reaffirmed his decision on August 7, 1995.
27. Lane Code 14.600(2)(b) requires the Board 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 by September 6, 1995 (21 days from the August 17, 1995, Hearings Official Appeal Deadline). Mr. Morgan's authorized representative has executed a waiver of the time line of LC 16.600(2)(b) and the 120-day time lines of ORS 215.428.
28. In order for the Board to hear the appeal, LC 14.600(3) requires one or more of the following findings:

" (3) A decision by the Board to hear the appeal on the record 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."
29. The relevant land use issues are site specific and are limited to the 1995 Hearings Official decision affirming the Planning Director's denial of a request for a dwelling in the Impacted Forest Land Zone (F) for failure to comply with Lane code 16.211(7)(i) access requirements which is not of Countywide significance.
30. The relevant issue involves the determination of legal access across two intervening ownerships which separate the subject parcel from a public road, Sunderman road. These requirements are clearly defined in Lane Code Chapter 16.211(7)(i). The issue does not occur frequently nor is it expected to in the future. The definitions and code requirements are clear and there is no need

for policy guidance.

31. The appeal involves the issue of compliance with the criteria and standards for establishing a dwelling not related to forest management within the Impacted Forest Land Zone and there are no identified unique environmental resource issues.
32. Neither the Planning Director nor the Hearings Official recommend review of this appeal.
33. To meet the requirements of LC 14.600(2)(b), the Board was 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 by September 6, 1995, (21 days from the August 17, 1995, Hearings Official Appeal Deadline).
34. The appellant has waived the required timeline, and the Board is scheduled to review the issues and make this decision on September 20, 1995.