

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 18-04-17-05 IN THE MATTER OF ELECTING WHETHER OR NOT
TO HEAR AN APPEAL OF A HEARINGS OFFICIAL
DECISION APPROVING A RELATIVE FARM HELP
DWELLING ON TAX LOT 300, ASSESSOR'S MAP 19-
03-07 (FILE NO. 509-PA17-05769/KEPPLER)

WHEREAS, the Lane County Hearings Official has made a decision to affirm a Planning Director approval of a relative farm help dwelling application, Department File No. 509-PA17-05769; and

WHEREAS, the Lane County Planning Director has received an appeal of the Hearings Official's decision to the Board of County Commissioners pursuant to LC 14.515(3)(f)(ii), requesting that the Board elect not to further hear the appeal and to deem the Hearings Official decision the final decision of the County; and

WHEREAS, the Lane County Hearings Official has affirmed his decision on the application after reviewing the appeal of File No. 509-PA17-05769; and


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

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

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

1. That the appeal does not comply with the criteria of Lane Code 14.600(3) and therefore, the Board declines to further review the appeal and consider arguments therein. Findings of fact in support of this determination are attached as Exhibit "A."
2. That the Lane County Hearings Official decision dated February 23, 2018, and the letter affirming the decision dated March 15, 2018 attached as Exhibit "B," which found relevant approval criteria are met, are ratified and affirmed by the Board of County Commissioners as the County's final decision. To the extent that the Hearings Official has interpreted or applied provisions of Lane Code, the Board expressly agrees with and adopts that reasoning.

ADOPTED this 17th day of April, 2018



Jay Bozievich, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 4-17-18

LANE COUNTY OFFICE OF LEGAL COUNSEL

ORDER EXHIBIT "A"

FINDINGS IN SUPPORT OF THE ORDER

1. Findings herein are provided for the appeal of Department File No. 509-PA17-05769.
2. Notice of the Hearings Official's decision was mailed to the applicant and parties of record on February 27, 2018.
3. On March 7, 2018, LandWatch Lane County, represented by Andrew Mulkey, filed a timely appeal and requested that the Board of County Commissioners not conduct a hearing on the appeal and deem the Hearings Officer's decision the final decision of the County, pursuant to LC 14.515(3)(f)(ii).
4. On March 15, 2018, the Hearings Official reviewed the appeal and affirmed his decision without further consideration pursuant to LC 14.535(1).
5. A decision by the Board to hear the appeal on the record must conclude that a final decision by the Board can be made within the time constraints established by ORS 215.427. In this case, staff deemed the application complete on October 3, 2017 and the deadline for a final decision by the County on this permit was March 2, 2018, and therefore a final decision by the Board after holding an on-the-record hearing cannot be made within the time constraints of ORS 215.427.
6. In order for the Board to hear arguments on the appeal, Lane Code 14.600(3) requires the appeal to comply with one or more of the following criteria:
 - *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.*
7. The Board finds that the issues raised in this appeal are not of countywide significance, will not occur with frequency, and are not in need of policy guidance.

Relative farm help dwellings while common are not amongst the most frequent of application types processed by Land Management Division. Furthermore, the assignments of error brought before the Hearings Official have not been raised with frequency.

This appeal primarily involves interpretation of ORS 215.213(1)(d) and ORS Chapter 92 and related case law. LUBA will not provide deference to the County of interpretation of State law. To the extent that the Hearings Official has interpreted Lane Code Chapter 16, those interpretations are reasonable. The Hearings Official's interpretations of ORS Chapter 215 and Chapter 92 will provide guidance should in the future a similar issue and fact pattern be presented to the Land Management Division

8. The Board finds that issues raised in this appeal do not relate to, or involve, a unique or Goal 5 inventoried environmental resource. This appeal primarily involves interpretation of ORS 215.213(1)(d) and ORS Chapter 92 and related case law.
9. Neither the Planning Director nor Hearings Official recommends review of the appeal on the record for the reasons cited above.

10. 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.
11. The Board has reviewed this matter at its meeting on April 17, 2018, finds that the appeal does not comply with the criteria of Lane Code Chapter 14.600(3), declines further review, and elects not to hold an on the record hearing for the appeal.
12. The Board elects not to conduct an on the record hearing for the appeal, to affirm and ratify the Lane County Hearings Official decision as the County's final decision, and to the extent that the Hearings Official has interpreted or applied provisions of Lane Code, to expressly agree with and adopt that reasoning.



March 15, 2018

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

Re: *Appeal of affirmation of the Planning Director approval of the request (PA 17-05769) by Peggy Keppler for a special use permit to allow a relative farm help dwelling on Tax Lot 300, Assessor's Map 19-03-07.*

Dear Ms. Kaye:

On February 23, 2018, I issued a decision affirming the Planning Director's approval of the request (PA 17-05769) by Peggy Keppler for a special use permit to allow a relative farm help dwelling on Tax Lot 300, Assessor's Map 19-03-07. On March 7, 2018 this decision was appealed by the Applicant. Upon a review of this appeal, I find that the allegations of error have been adequately addressed in that decision and that a reconsideration is not warranted.

It should be noted that the title of that decision and the paginated decision date was wrong. A corrected version of that decision is attached. No substantive changes have been made.

Accordingly, on the authority of Lane Code 14.535(1), I shall affirm my February 23, 2018 reconsidered decision without further consideration. Please advise interested parties of this decision.

Sincerely,


Gary L. Darnielle
Lane County Hearings Official

cc: Amber Bell (file)

**LANE COUNTY HEARINGS OFFICIAL
APPEAL OF A PLANNING DIRECTOR APPROVAL OF A RELATIVE FARM
HELP DWELLING IN AN EXCLUSIVE FARM USE DISTRICT**

Application Summary

On September 6, 2017, an application for a special use permit to allow a Relative Farm Help dwelling in the Exclusive Farm Use (E-40) zone to the Lane County Land Management Division. On October 3, 2017, the Planning Director deemed the application complete and on December 19, 2017, the Director approved the request. Notice of the determination was mailed to surrounding property owners. On January 2, 2018, a timely appeal was submitted by LandWatch Lane County.

Parties of Record

Peggy Keppler	LandWatch Lane County	Thom Lanfear
Andrew Mulkey	Lauri Segel-Vacher	Michael Farthing

Application History

Hearing Date: January 25, 2018
(Record Held Open Until February 15, 2018)

Decision Date: February 23, 2018

Appeal Deadline

An appeal must be filed within 12 days of the issuance of this decision, using the form provided by the Lane County Land Management Division. The appeal will be considered by the Lane County Board of Commissioners.

Statement of Criteria

Lane Code 16.212(5)(c)
OAR 660-033-0100(8)
ORS 92.192

Findings of Fact

1. The property subject to this application, hereinafter referred to as the "subject property," is located on tax lot 300, assessor's map 19-03-07. It is located approximately 4 miles west of the City of Creswell. The parcel abuts Camas Swale Road on the south property line and has an address of 31347 Camas Swale Road, Creswell. The property is designated Agriculture in the Lane County Rural

Comprehensive Plan and is zoned Exclusive Farm Use (E-40) consistent with that designation. The parcel is approximately 72 acres in size and is developed with a dwelling built in 1964, a shed, agricultural building, well, and septic tank and drainfield that will serve the proposed dwelling.

The existing dwelling on the subject property was constructed in 1964. The subject property was originally listed by the Lane County Assessor as being tax lot 200 but subsequent to the 2009 property line adjustment, the Assessor changed the tax lot number to 300.

2. The subject property is surrounded to the west, north, and east by properties zoned Exclusive Farm Use (E-40/RCP). Across Camas Swale Road to the south is zoned Impacted Forest Lands (F-2/RCP). The surrounding area is mostly comprised of rural properties in farm or forest use along with low density residential uses.
3. The proposal is to construct a single family relative farm help dwelling in conjunction with the 1964 dwelling on the same parcel occupied by the farm operator. The farm operator is Chris Keppler and his wife Katy who will remain in the existing dwelling. Chris's parents, Peggy Keppler and her husband Mike, will move into the new farm help dwelling. The new home site is proposed to be located between the existing dwelling and barn within the existing homesite area, approximately 10 feet west of the existing primary farm dwelling and 27 feet east of the barn. Another farm dwelling exists 240 feet east of the site of the proposed dwelling.

The farm operation on the subject property consists of raising 225 head of sheep for meat purposes. The farm operator plans to increase his flock to 450 and begin raising chickens for egg sales. Currently, about 200 lambs are sold annually, as well as 1500 tons of wool. In addition, the laying hens should result in sales of 250 dozen eggs annually. The year-round operation includes feeding and caring for the animals. In the spring, lambing season involving tagging, castrating, worming and protecting as needed. Shearing the sheep takes two to three weekends, and summer involves putting up hay feed and preparing for winter feeding. Late summer the lambs are weaned involving separating the ewes from the lambs, monitoring, setting up fencing and fence repair. Late fall the lambs are taken to market and the ewes are hulled. Then breeding begins and you start preparing for the next season. As proposed, the family operation involves assisting the primary farm operator in daily monitoring of livestock and their water supply system, helping maintain fences, seasonal monitoring of lambing, and sorting, separating, and weaning. The farm operators will continue to own, manage, and serve as the financial managers of the cattle ranch.

4. Tax Lot 300 is a parcel that was reconfigured with Tax Lot 200 through a declaration of property line adjustment in 2009 in Instrument 2009-048881. The

legal lot status of Tax Lot 300 and the validity of the property line adjustment with Tax Lot 200 were confirmed in 2014 under planning action PA 14-05250. The legal lot status of Tax Lot 200 and the validity of the property line adjustment with Tax Lot 300 were confirmed in 2017 under planning action PA 17-05581. The original Tax Lot 300 is described in the deed recorded in Book 235 Page 82 and conveyed on August 13, 1942. The original Tax Lot 200 is described in the Bargain and Sale Deed recorded on Reel 664, Instrument 7350975, Lane County Deeds and Records, and conveyed on October 30, 1973 with original Tax Lot 300.

The subject property was not subject to partition requirements until March 26, 1975. The parcel was created in its original configuration in 1964. No County approval was required for the 2009 property line adjustment. The Lane Code 13.450 requirements for County approval of property line adjustments were not applicable until January 8, 2010, with the adoption of Ordinance 2-09.

Lane County approved a relative farm help dwelling in 1993 with the existing dwelling on the subject property being the primary farm dwelling for that action (PA 93-01829). The subject property was reconfigured through a property line adjustment in 2009 to move the boundary of adjacent tax lot 200 to encompass the relative farm help dwelling.

5. ORS 215.213(1)(d) allows a dwelling on EFU-zoned land used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse. This statutory provision became effective in 1981¹. Lane Code 16.212(5)(c) allows these dwellings subject to five provisions that generally mirror the requirements of the statute.

Decision

THE PLANNING DIRECTOR'S DECISION APPROVING THE REQUEST (PA 17-05769) BY PEGGY KEPPLER FOR A SPECIAL USE PERMIT FOR A RELATIVE FARM HELP DWELLING ON TAX LOT 300, ASSESSOR'S MAP 19-03-07 IS AFFIRMED.

Justification for the Decision (Conclusion)

The subject property is zoned E-40 Exclusive Farm Use. Lane Code 16.212(5)(c) allows a relative farm help dwelling on farm land regardless of his agricultural value.

The Appellant has raised several allegations of error regarding the Director's decision. These allegations are addressed below:

¹ Oregon Laws 1981, c. 748, §44.

1. *The Director lacks sufficient evidence to approve a relative farm help dwelling on Tax Lot 300 of Map 19-03-07, because a previous owner already used the primary dwelling to qualify for a relative farm help dwelling in PA 93-01829. A property line adjustment done in 2009 unlawfully separated a relative farm help dwelling located on tax lot 200 from the 1964 farm dwelling on tax lot 300. OAR 660-033-0100(8) and ORS 92.192*

The Appellant points out that ORS 215.213(1)(d) (as it existed today and in 2009) allows farm help dwellings on real property used for farm use only the dwelling is located on the same lot or parcel as the dwelling of the farm operator. The Appellant then argues that the transfer of the farm help dwelling to the adjacent parcel via a property line adjustment was illegal, regardless of whether there was a specific administrative rule prohibiting a lot reconfiguration with that result.

ORS 215.213(1)(d) states, in part:

“(d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator’s spouse ... and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. ...”

Evidence in the record supports a conclusion that the Applicant has satisfied the ORS 215.213(1)(d). The subject property is utilized for farming and the Applicant has made a showing of why assistance is necessary to maintain the farm. In addition, she has shown how she and her husband will provide assistance in the farming operation of her son and daughter-in-law, Chris and Katy Keppler, who own the subject property. These facts have not been challenged. The burden then lies with the Appellant to show why a relative farm help dwelling should not be approved for the subject property.

I agree with the Appellant that the 2009 property line adjustment potentially could be contrary to the clear intent of ORS 215.213(1)(d). However, the focus of the statute is on the ‘use’ of the dwelling not the dwelling itself. Thus, if the relative farm help dwelling qualified as the primary farm dwelling on tax lot 200, per ORS 215.213(1)(f), or if it served as a relative farm dwelling to the primary dwelling on that tax lot, per ORS 215.213(1)(d), then arguably the property line adjustment was not inconsistent with the statute. The record does not have this information and therefore I cannot determine if the effect of the 2009 property line adjustment violated ORS 215.213(1)(d). As indicated above, evidence in the record supports a conclusion that the Applicant has satisfied the ORS 215.213(1)(d).

In 2009 there was no statute or administrative rule that explicitly prohibited the separation of an existing relative farm help dwelling from the subject property by property line adjustment. ORS 215.263(8) (2009 version) provided that *“the governing body of a county may not approve any proposed division of a lot or*

*parcel described in ORS 215.213(1)(d) ...*² This statutory language has not changed and arguably only affects the division of a lot or parcel not a reconfiguration.

The explicit restriction of separating a dwelling for relative farm help from the same parcel as the primary farm residence was first enacted in 2016³ with the following amendments to OAR 660-033-0100:

OAR 660-033-0100(8) states:

“The county governing body or its designate may not approve a land division or property line adjustment of a lot or parcel that separates a temporary hardship dwelling, relative farm help dwelling, home occupation or processing facility from the parcel on which the primary residential or other primary use exists.”

OAR 660-033-0100(9) provides:

“The county governing body or its designate may not approve a land division of a lot or parcel created before January 1, 1993, on which a nonfarm dwelling was approved pursuant to ORS 215.284(1).”

There has been no evidentiary offering of a legislative intent to make these restrictions retroactive.

Finally, the 2009 property line adjustment did not violate ORS 92.192. Subsection (4) of this statutory provision was adopted in 2008 in response to the *Phillips* case out of Polk County.⁴ This provision of the statute is not applicable to the 2009 property line adjustment as the subject property was larger than the minimum lot size before and after the reconfiguration.

This allegation of error is dismissed.

2. *A property line adjustment done in 2009 was unlawful as it was not approved by Lane County.*

The Applicant argues that the Appellant may not challenge the 2009 property line adjustment as the subject property has subsequently been verified as a legal lot. I don't agree. The legal lot verification process determines whether a unit of land was lawfully created pursuant to ORS 92.010(3). It does not determine whether a

² Oregon Laws 2009, c. 850, §8 (effective 1/1/2010)

³ These changes first appear in the 2017 published edition of the Oregon Administrative Rules. They were adopted by LCDC Order 6-2016, effective 3/24/2016.

⁴ *Phillips v. Polk County*, 53 Or LUBA 194, *aff'd*, 213 Or App 498, 162 P3d 338 (2007), *rev den*, 344 Or 43 (2008).

parcel has been unlawfully reconfigured prior to or subsequent to that determination.

The Appellant has argued that the *Bowerman* case is dispositive on this issue. I cannot understand why. The *Bowerman*⁵ case concerned Lane County's property line adjustment provisions that are contained in Lane Code 13.450. The Oregon Court of Appeals only noted that this code provision was a response to the Oregon Legislature's grant of authority in ORS 92.190. The court had nothing to say about the County's procedures prior to 2010 as that issue was not before the court.

In 2009, Lane County did not require planning department approval of property line adjustments. This requirement, currently found in Lane Code 13.450, was not applicable until January 8, 2010, with the adoption of Ordinance 2-09. ORS 92.190(3) states that "*The governing body of a city or county may use procedures other than replatting procedures in ORS 92.180 and 92.185 to adjust property lines ...*" The term 'procedures' does not imply formal approval by the County and the procedure used consistently by Lane County until 2010 was to rely upon the survey and recording requirements of ORS 92.190(3) and the mandatory deed components expressed by ORS 92.190(4). The 2009 property line adjustment complied with these statutory requirements. Nor is there any allegation that the property line adjustment reduced a parcel below the minimum size required by the existing zoning. Indeed, the subject property is currently 72 acres in size and is zoned E-40.

This allegation of error is dismissed.

3. *A relative farm help dwelling cannot be authorized when there is no authorization for the existing 'single family dwelling' existing on the subject property.*

The existing dwelling on the subject property was lawfully developed in the current location in 1964 and subsequently approved for an addition in 2000. Development of a residence on the property was not restricted in 1964 since the first zoning of the property occurred in 1966 with adoption of Lane County Ordinance 225.

This allegation of error is dismissed.

Summary

The record supports a conclusion that the Applicant has satisfied the provisions of Lane Code 16.212(5)(c) and the Appellant has not provided sufficient evidence to show that the 2009 property line adjustment violated ORS 215.213(1)(d). Finally, until overruled by LUBA, I believe that the County's treatment of property line adjustments prior to 2010, which required compliance with statutory requirements but no official action by Lane

⁵ *Bowerman v. Lane County*, 287 Or App 383, 386 (2017).

County, complied with the authorization of ORS 92.190(3) to use 'procedures' other than replatting to adjust property lines.

Respectfully Submitted,



Gary Darnielle
Lane County Hearings Official