

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 18-10-16-05 IN THE MATTER OF ELECTING WHETHER OR NOT TO HEAR AN APPEAL OF A RECONSIDERED HEARINGS OFFICIAL'S DECISION APPROVING A PRELIMINARY PARTITION ON ASSESSOR'S MAP AND TAX LOT 18-01-00-00-01500; (FILE NO. 509-PA17-05297/McDougal).

**WHEREAS**, the Lane County Hearings Official has made a reconsidered decision approving a Preliminary Partition on Assessor's Map and Tax Lot 18-01-00-00-01500, pursuant to Lane Code 16.210(9)(e), in Department File No. 509-PA17-05297; and

**WHEREAS**, the Lane County Planning Director has received an appeal of the Hearings Official's reconsidered decision to the Board of County Commissioners pursuant to LC 14.080(4)(d); and

**WHEREAS**, the Lane County Hearings Official has affirmed his decision on the application after reviewing the appeal in File No. 509-PA17-05297; and

**WHEREAS**, Lane Code 14.080(4)(d) 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 a decision by the Board cannot be made within the time constraints for the remanded decision in order to conduct a public hearing. Findings in support of this decision are attached as Exhibit "A."
2. That the Lane County Hearing's Official decision dated September 14, 2018, and the letter affirming the decision dated September 27, 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. The Board expressly agrees and adopts the Hearing Official's interpretation and application of Lane Code.

ADOPTED this 16th day of October, 2018.

*Jay Bozievich*

Jay Bozievich, Chair  
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 10-16-18

*[Signature]*  
LANE COUNTY OFFICE OF LEGAL COUNSEL

## ORDER EXHIBIT "A"

### FINDINGS IN SUPPORT OF THE ORDER

1. The property subject to this application, hereinafter referred to as the "subject property," is located on tax lot 1500, assessor's map 18-01-00, The subject property has a site address of 37820 Wallace Creek Road and is about 48 acres in size. It is located south of Wallace Creek Road and approximately 1.5 miles (as the crow flies) southwest of the Urban Growth Boundary of Springfield. The applicant proposes to divide the subject property into two parcels, each to contain an existing dwelling. Proposed Parcel 1 is 43.0 acres in size and Parcel 2 is proposed to be 5.0 acres in size.
2. The applicant requests approval for a preliminary partition to divide two existing dwellings on their own parcel. Lane Code allows for a division of F-1 land into smaller than the minimum parcel size (80 acres) in limited circumstances pursuant to LC 16.210(9)(e).
3. The subject property is designated "Forest" on the Lane County Rural Comprehensive Plan. It is zoned Non-impacted Forest Lands (F-1) zone, consistent with the Plan designation. Surrounding properties to the west, are zoned F-1, Exclusive Farm Use (E-30) zone and Rural Residential (RR-5) zone, to the north properties are zoned Impacted Forest Lands (F-2) zone, and to the east properties are zoned F-1. The abutting property to the south is zoned Non-Impacted Forest (F-1) zone.
4. Based on Assessment and Taxation data, the subject property contains two (2) dwellings, a stick-built dwelling constructed in 1900 and a manufactured dwelling. The 1900 dwelling is located approximately 100' north of the south property line and is shown on a 1983 building permit No. 509-BP83-00767. The Planning Director found that the stick built dwelling has been in lawful existence since the early 1900's and its legal status does not appear to be in question.

The following is the history for the manufactured dwelling:

- a. In 1977, Lane County viewed tax lot 1500 as a single lot (file 509-PA15-05117) although at the time Lane County did not have a mechanism for validating legal lot status. The property was owned by the Western Rivers Girl Scout Council.
- b. In 1977, a manufactured dwelling was placed on the northern portion of tax lot 1500. A temporary dwelling permit and septic tank installation (BP77-01237). The temporary dwelling permit stated the home would be used for residential purposes for a watchman or caretaker.
- c. In 1985, the Western Rivers Girl Scout Council applied for a special use permit to allow the expansion of an existing Girl Scout Camp on the subject property. The special use permit was intended to implement the applicant's management plan, the Camp Wallace Creek Plan (dated 1981). The applicant supplemented the plan with additional information that included a request for two dwellings. The special use permit (PA85-01075) that was approved by the Hearings Official specifically allowed two dwellings on the subject property.
- d. Subsequently, the manufactured dwelling was replaced under replacement dwelling permit BP85-01729. The building permit referenced PA85-01075 as the authorization for the replacement. A final inspection of the replacement mobile home was approved on August 19, 1985.

- e. The manufactured dwelling was again replaced under permit 509-BP95-00453 and in conjunction with planning permit 509-PA95-00452, a Planning Director Special Use Permit (SUP) to replace an existing dwelling on a new location in the F-2 zone. The staff generated "Vicinity Map" within the SUP is in error as it shows the dwelling site on Tax Lot 2400 while the site plan in the application depicts the dwelling on Tax Lot 1500.

The SUP issued under 509-PA95-00452 was noticed and obtained final approval on April 28, 1995. The building permit for the replacement manufactured dwelling was finalized on June 29, 1997.

- f. The mobile home was again replaced under permit 509-BP16-00296 by administrative approval for a "same site" replacement dwelling. It was replaced with a 1997 Palm Harbor manufactured dwelling in conjunction with planning permit 509-PA14-05490. The building permit was finalized on July 24, 2016.
5. On March 29, 2017, the applicant submitted an application for a preliminary partition in the Non-Impacted Forest Lands Zone (F-1). On April 21, 2017 the agent submitted an amended application narrative under F-1 area criteria subsection (9)(e), division of two existing dwellings. On April 21, 2017, staff deemed the application complete. On April 27, 2017, staff solicited referral responses from affected agencies, service providers and surrounding property owners. Staff received two separate hold requests totaling 60 days from the applicant. On October 3, 2017, the Planning Director approved the application, authorizing the preliminary partition on the subject property, and notice of pending land use decision was mailed. On October 16, 2017, the appellant (LandWatch) submitted a timely appeal.
  6. On November 16, 2017, the Lane County Hearings Official conducted a public hearing. The written record was held open until November 22, 2017, with opportunity for the appellant (LandWatch) to respond by November 30, 2017, and applicant's final written argument by December 7, 2017. On December 27, the Lane County Hearings Official issued a decision reversing the Planning Director conditional approval and denied the proposal. Notice of the Hearings Official's decision was mailed to the applicant and all parties of record on December 29, 2017.
  7. On January 8, 2018, the appellant (the applicant/owner Norm McDougal) filed a timely appeal pursuant to LC 14.515(3)(f)(ii), requesting the Board elect not to hear the appeal. On February 27, 2018, the Board decided to not hear the appeal.
  8. The applicant then filed a writ of review with the Oregon Land Use Board of Appeals. On April 10, 2018, LUBA issued a letter suspending the LUBA appeal until a local decision on reconsideration is rendered based on an April 4, 2018 withdrawal request. On April 30, 2018, the applicant filed a formal remand request with Lane County.
  9. On June 12, 2018, the remand request went before the Board of Commissioners in order for the Board to remand the item to the Lane County Hearings Official. The Board approved an order remanding the decision to the Hearings Official. On August 2, 2018, the Hearings Official opened the public hearing and continued the hearing to August 16, 2018.
  10. On August 27, 2018, LUBA issued an order approving the County's request for a 90 day extension with a deadline date of October 22, 2018 to get a decision to LUBA.
  11. On September 14, 2018, the Hearings Official issued a reconsidered decision affirming the Planning Director and approved the Preliminary Partition application. A timely appeal was received on September 26, 2018 by LandWatch Lane County, represented by attorney Andrew Mulkey. The appeal was forwarded to the Hearings Official for review. On

September 27, 2018, the Hearings Official issued a letter affirming his September 14, 2018 decision.

10. In order for the Board to hear arguments on the appeal, Lane Code 14.080(4)(d) 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 impacts to an inventoried Goal 5 resource;*
  - *The Director or Hearings Official recommends review.*
11. The election to hear determination by the Board to hear the appeal pursuant to LC 14.080 (4)(d)(ii), must conclude that the final decision by the Board can be made within the applicable time limit and that 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. LUBA's order suspending the appeal gave Lane County until July 3, 2018 to reconsider its decision on remand. A reconsidered decision had not been made by this date and the County filed a motion to extend LUBA's deadline for 90 days. On August 27, 2018, LUBA issued an order approving the County's request for a 90 day extension with a deadline date of October 22, 2018 to get a decision to LUBA. This item is scheduled with the Board of Commissioners on October 16, 2018 agenda schedule in order to meet this deadline.
12. The Board finds that the issue is not of countywide significance. The issue will not recur with frequency and therefore, there is not a need for policy guidance. The issue does not involve impacts to inventoried Goal 5 resources.
13. The Director does not recommend review of the appeal on the record for the reasons cited above.
14. To meet the requirements of Lane Code 14.080(4)(d)(v), the Board is required to adopt a written decision and order declining further review.
15. The Board has reviewed this matter at its meeting on October 16, 2018, and declines further review, and elects not to hold an on the record hearing for the appeal.
16. 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 expressly agree with and adopt the Hearing Official's interpretation and application of Lane Code.



September 27, 2018

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

Re: *Appeal of the reconsidered decision that, on remand from LUBA, reversed an earlier decision reversing the Planning Director's approval of the request (PA 17-05297) by the McDougal Bros. for a partition in an F-1 Nonimpacted Forest Lands District.*

Dear Ms. Kaye:

On September 14, 2018, I issued a reconsidered decision reversing my earlier reversal of the Planning Director's approval of the request (PA 17-05297) by the McDougal Bros. for a partition in an F-1 Nonimpacted Forest Lands District. On September 26, 2018 this reconsidered decision was appealed by Landwatch Lane County. Upon a review of this appeal, I find that the allegations of error have been adequately addressed in the reconsidered decision on remand and that a further reconsideration is not warranted.

Accordingly, on the authority of Lane Code 14.080(4)(b), I shall affirm my September 14, 2018 reconsidered decision without further consideration. Please advise interested parties of this decision.

Sincerely,

  
Gary L. Darnielle  
Lane County Hearings Official

cc: Deanna Wright (file)

Attachment 1  
Exhibit B

## LANE COUNTY HEARINGS OFFICIAL

### RECONSIDRATION OF A HEARINGS OFFICIAL DENIAL OF A REQUEST FOR A PRELIMINARY PARTITION OF NONIMPACTED FOREST LAND (F-1)

#### Application Summary

On March 29, 2017, Norm McDougal requested preliminary partition approval regarding tax lot 1500, assessor's map 18-01-00. The application was deemed complete on April 21, 2017 and approved by the Planning Director on October 3, 2017. A timely appeal was submitted by LandWatch Lane County on October 16, 2017. The Lane County Hearings Official reversed the Planning Director and denied the application on December 27, 2017. The Applicant subsequently appealed to the Lane County Board of Commissioners who decided on February 27, 2018 not to hear the appeal. The Applicant then filed a writ of review with the Oregon Land Use Board of Appeals (LUBA).

On March 29, 2018, the Applicant asked the County request a voluntary remand from LUBA and the County complied. This request was granted by LUBA on April 10, 2018. On April 30, 2018, the Lane County Board of Commissioners remanded the appeal to the Hearings Official (Board Order 18-06-12-10).

LUBA's order suspending the appeal gave Lane County until July 3, 2018 to reconsider its decision. A reconsidered decision had not been made by this date and the County filed a motion to extend LUBA's deadline for 90 days. On August 27, 2018, LUBA issued an order approving the County's request for a 90-day extension.

#### Parties of Record

Jeannie Marr  
Michael Farthing  
Mike Evans/Geri Betz

Kim O'Dea  
Sean Malone

LandWatch Lane County  
William & Lisa Lilles

#### Application History

Reconsideration Hearing Date: August 2, 2018  
(Record Held Open Until September 11, 2018)

Decision Date: September 14, 2018

#### Appeal Deadline

An appeal must be filed within 12 days of the issuance of a final order on this rezoning request, 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**

LC 16.210(9)(e)  
ORS 215.780(2)

## **Findings of Fact**

1. The property subject to this application, hereinafter referred to as the “subject property,” can be identified as tax lot 1500, assessor’s map 18-01-00. The subject property has a site address of 37820 Wallace Creek Road and is about 48 acres in size. It is located south of Wallace Creek Road and approximately 1.5 miles (as the crow flies) southwest of the Urban Growth Boundary of Springfield. The Applicant proposes to divide the subject property into two parcels, each to contain an existing dwelling. Proposed Parcel 1 is 43.0 acres in size and Parcel 2 is proposed to be 5.0 acres in size.

The subject property is designated “Forest” on the Lane County Rural Comprehensive Plan. It is zoned Non-Impacted Forest Lands (F-1), consistent with that plan designation. Surrounding properties to the west, are zoned F-1, Exclusive Farm Use (E-30) Zone and Rural Residential (RR-5), to the north properties are zoned Impacted Forest Lands (F-2), and to the east properties are zoned F-1. The abutting property to the south is zoned Non-Impacted Forest (F-1).

2. Based on Assessment and Taxation data, the subject property contains two (2) dwellings, a stick-built dwelling constructed in 1900 and a manufactured dwelling. Lane County Assessment and taxation data shows a stick-built dwelling currently assessed on the subject property. The 1900 dwelling is located approximately 100’ north of the south property line and is shown on a 1983 building permit No. 509-BP83-00767 site plan. The Planning Director found that the stick-built dwelling has been in lawful existence since the early 1900’s and continues to exist today with intact walls, roof structure, kitchen sink, electricity, bathing and heating facilities. The County acknowledged the dwelling as a “lawfully established dwelling in 2014 when it issued a verification of replacement rights. (PA 14-05490) Its legal status does not appear to be questioned.

The following is the history for the manufactured dwelling:

- a. In 1977, Lane County viewed tax lot 1500 as a single legal lot. (PA 15-05177) although at the time the county did not have a mechanism for validating legal lot status. The property was owned by the Western Rivers Girl Scout Council.

- b. In 1977, a manufactured dwelling was placed on the northern portion of tax lot 1500 pursuant to a temporary dwelling permit and septic tank installation. (BP77-01237) The temporary dwelling permit stated the home would be used for residential purposes for a watchman or caretaker.
- c. In 1985, the Western Rivers Girl Scout Council applied for a special use permit to allow the expansion of an existing Girl Scout Camp on the subject property. The special use permit was intended to implement the applicant's management plan, the Camp Wallace Creek Plan (dated 1981). The applicant supplemented the plan with additional information that included a request for two dwellings. The special use permit (PA 1075-85) that was approved by the hearings official specifically allowed two dwellings on the subject property.
- d. Subsequently, the manufactured dwelling was replaced under replacement building permit BP 85-01729. The building permit specifically referenced PA 1075-85 as the authorization for the replacement. A final inspection of the replacement mobile home was approved on 8-19-85.
- e. The manufactured dwelling was again replaced under permit 509-BP95-00453 and in conjunction with planning permit 509-PA95-00452 a Planning Director Special Use Permit (SUP) to replace an existing dwelling on a new location in the F-2 zone. The staff generated "Vicinity Map" within the SUP is in error as it shows the dwelling site on Tax Lot 2400 while the site plan in the application depicts the dwelling site on Tax Lot 1500.

A current aerial photograph shows where the dwelling existed since 1977-1995. The aerial shows a possible structure where the 1995 manufactured dwelling was and staff has advised the Applicant to ensure this MH is removed per the requirements in 509-BP85-00453 and 509-PA95-00452 as both permits stated removal or relocation was required for existing mobile home.

The SUP under 509-PA95-00452 was noticed and obtained final approval on 4-28-95 and the building permit for the replacement MH in its present-day location was finalized on 6-29-97.

- f. The mobile home was again replaced under permit 509-BP16-00296 by administrative approval for a "same site" replacement dwelling, It was replaced with a 1997 Palm Harbor manufactured dwelling in conjunction with planning permit 509-PA14-05490. The building permit was finalized on 7-24-16.



### **Reconsidered Decision**

THE DECEMBER 27, 2017 HEARINGS OFFICIAL DECISION IS WITHDRAWN AND, UPON RECONSIDERATION, THE PLANNING DIRECTOR'S APPROVAL OF THE NORM McDOUGAL REQUEST (PA 17-05297) FOR THE PRELIMINARY PARTITION OF TAX LOT 1500, ASSESSOR'S MAP 18-01-00 IS AFFIRMED. The following "Informational Only" condition of approval has been added to those required by the Planning Director:

17. Section LC 16.210(9)(e)(vii) requires that the Planning Director maintain a record of lots and parcels that do not qualify for division under restrictions imposed by LC 16.210(9)(e)(vii) above. The record shall be readily available to the public.

### **Rulings of Objections**

At the November 16, 2017 hearing on this matter, and with the agreement of both parties, it was ordered that the record would be held open one week for the Applicant to submit additional evidence and argument. Thereafter, the record was held open another week to allow the Appellant to respond to the information placed into the record by the Applicant during the first week. Finally, the Applicant was allowed one week to submit final argument/rebuttal.

During the first period of the open record (November 22, 2017), the Applicant submitted Lane County Master Road File No 482, regarding Jones Road, and Lane County Master Road File No 421, regarding Wallace Road; a bargain and sale deed dated November 23, 2015 from McDougal Bros. Investments to Norman McDougal; and a Department of Assessment and Taxation deed card for the subject property. At the end of the second week of the open record, the Appellant submitted a five-page letter and three exhibits. The Appellant's letter raised issues regarding the application's compliance with ORS 215.780(2)(e), etc. and provided additional arguments regarding the unlawful nature of the mobile home replacement approvals. Appellant's Exhibit 1 pertained to Lane County's inspection record for the placement of a 1995 mobile home and installation of a sand filter sewage disposal system for 37817 Wallace Creek Road, Springfield, Oregon (BP 95-00453). Exhibit 2 contained excerpts from an application for the verification of replacement rights and corresponding Planning Director decision in file PA 05-6587 approving the application. Exhibit 3 contained excerpts from file PA 14-05490 regarding a subsequent application and Planning Director decision for the verification of replacement rights of the mobile home on Non-Impacted Forest Lands.

The Applicant subsequently argued in its rebuttal statement that the Appellant's November 30, 2017 submission was not responsive to his November 22, 2017 submission and should therefore be stricken from the record. The Appellant responds that the Applicant did not provide any analysis of the documents provided and left it up to the Appellant to interpret their significance. The Appellant also pointed out that it had

previously raised the issue that the Applicant's findings were insufficient and that its November 30 submission was an attempt to demonstrate this inadequacy.

I agree with the Appellant that the submission of evidentiary materials without an explanatory narrative may make it difficult to understand what legal argument they are intended to support. In the present case, however, the materials submitted by the Applicant on November 22 are pretty straightforward and aren't open to a wide degree of interpretation. The materials regarding the County's road files can only be relevant in regard to the confusion about the location of the mobile home caused by the bisection of the subject property by Jones Road. These materials show that the County accepted the roads and, I believe, create a presumption that the County retains those roads in fee. In regard to the bargain and sale deed, I cannot interpret its relevance beyond a showing of how and when the Applicant acquired the subject property. Finally, the real property tax lot record does nothing more than identify the subject property's size and deed history back to 1941. None of these materials relate to the placement or subsequent replacement of the mobile home in question. Neither are these materials relevant to the question of whether the two dwellings on the subject property complied with the criteria for a replacement dwelling.

The Appellant argues in its December 12, 2017 submission that the November 30, 2017 materials were intended to demonstrate that the Applicant had not met the requirements of ORS 215.780(2)(c). However, the Appellant could have made the same argument if the Applicant had submitted no materials on November 22, 2017. The Applicant cites LUBA's decision in the *Marr* case<sup>1</sup> to support its motion to strike the Appellants November 30, 2017 submission.

As I understand ORS 197.763(6)(c) and (7), during the initial open record period, any person has the right to introduce new evidence and argument. In the present situation, only the Applicant thought it necessary to supplement the record during this period. The Appellant reasonably requested a subsequent period of time to review and respond to the new evidence submitted by the Applicant and this request was granted.

I must conclude that the Appellant's November 30, 2017 materials and argument were not responsive to the Applicant's November 22, 2017 submission and must be stricken from the record. If the Appellant had wished to further bolster its case regarding the inadequacy of the Applicant's findings it should have indicated that it desired to do so during the first open record period. It had a right to do so under ORS 197.763(7). It did not indicate that it wished to make a submission during the first open record period and it did not do so.

However, in regard to the Appellant's November 30, 2017 narrative, it should be pointed out that the Appellant had previously alleged that the application failed to comply with ORS 215.780(2)(e) in its November 16, 2017 submission. The Hearings Official is aware

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<sup>1</sup> *Landwatch Lane County v. Lane County*, LUBA No. 2016-106 (05/02/2017)

that Lane Code 16.210(9)(e) is a creature of that statute and understands that Lane Code 16.210(9)(e) must be applied in a manner that satisfies the intent of ORS 215.780(2)(e) and corollary statutory law.

**Justification for the Decision (Conclusion)**

The basis on which the Planning Director's preliminary approval of the application rests on the application and interpretation of ORS 215.780(2) and LC 16.210(9)(e).

ORS 215.780(1)(c) provides that the minimum lot or parcel size for land designated as forestland is at least 80 acres unless a lower minimum is justified under ORS 215.780(2). In this regard, ORS 215.780(2)(e) states:

***“(e) To allow a division by partition of a lot or parcel zoned for forest use or mixed farm and forest use under a statewide planning goal protecting forestland if:***

***(A) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;***

The Appellant argues that the statute does not allow a landowner to use a replacement dwelling that was placed after November 4, 1993 to qualify a unit of land for a partition. Absent any legislative history to the contrary, I do not believe that the statute states or even implies this result.

The December 27, 2017 decision was primarily based upon a conclusion that the record did not support a finding that the temporary mobile home placed on the property in 1977 was lawful on November 4, 1993. Evidence introduced into the record during this remand demonstrate that the manufactured dwelling was given lawful status with the issuance of a 1985 special use permit.

The Appellant also argues that the manufactured dwelling, as it is currently located, did not exist on the parcel on November 4, 1993. However, the diagram accompanying the 1985 sanitation inspection (SI 85-161) shows the caretaker dwelling in that same location that it has always been. This conclusion is also confirmed by building permit BP 85-1729 that also shows that the manufactured dwelling in its current location.

***(B) Each dwelling complies with the criteria for a replacement dwelling under ORS 215.213 (1)(q) or 215.283 (1)(p);***

The record indicates that both dwellings, as they currently exist, have these structural features.

The Appellant makes several arguments as to why the mobile home on the subject property did not comply with the replacement dwelling standards. The first argument is that the record does not contain adequate information regarding the assessment and taxation of the structure as required by Chapter 462, Oregon Laws 2013. Normally, replacement dwellings on forest land are governed by ORS 215.755(1). However, the citation to ORS 215.213(1)(q) makes Chapter 462, Oregon Laws 2103 applicable as the preamble of that Act states that it is: “*Relating to dwellings on tract of land zoned for exclusive farm use; creating new provisions; and amending ORS 215.213, 215.283 and 215.417.*”

The record, in the form of a February 14, 2017 Regional Land Information Database for Lane County, shows assessment and taxation entries for the stick-built dwelling from 1995 to 2016. This data satisfies Section 2(b)(A), Chapter 462 of Oregon Laws 2013, which is the lesser of the two standards. The same document shows two years (2015 & 2016) of taxation and assessment data for the existing mobile home which is generally consistent with the verification of replacement rights through PA 14-05490 and placement on the subject property through BP 16-00296. I believe that the record demonstrates that the assessment and taxation data for the most recent replacement of the mobile home complies with Section 2(b)(B) of Chapter 462 of Oregon Laws 2013. That the mobile home and the stick-built dwelling also comply with the necessary physical characteristics of Section 2(a) does not appear to be in question.

The Appellant’s second argument is that ORS 215.755 is applicable and does not allow a lapse in existence of a dwelling to be replaced. ORS 215.755 applies to “Other forestland dwellings” and subsection (1) provides standards for the “alteration, restoration or replacement” of a lawfully established dwelling. The Appellant relies upon the language of ORS 215.755(1)(a) through (d) that requires that the lawfully established dwelling “has” those characteristics; implying that the dwelling must be in existence at the time permit approval is requested. I do not agree with this argument. The two dwellings being contested are not “other forestland dwellings” but rather two dwellings that exist on forest land that are subject to ORS 215.780(2)(e). This statute is specific in regard to which replacement dwelling standards are applicable to a proposed partition under this section of the statute. Further, Section 2(a), Chapter 462 of Oregon Laws 2013 explicitly applies to a replacement dwelling that “*has, or formerly had*” the listed structural characteristics. This language does not preclude the removal of a dwelling prior to the approval for its replacement. By the same token, Section 2(a), Chapter 462 of Oregon Laws 2013 does not incorporate the ORS 215.755 requirement that the replacement approvals contain findings regarding compliance with an acknowledged comprehensive plan and land use regulations.

I believe that the Appellant is also arguing that the dwellings that currently exist and are subject to the replacement dwelling standards must be the same dwellings that existed in 1993. Thus, it argues that one cannot apply the replacement dwelling standards to a dwelling that has been replaced since that date. The statute does not state or imply this result.

The Applicant has complied with this statutory provision.

- (C) *Except for one parcel, each parcel created under this paragraph is between two and five acres in size;*

Parcel 1 under the proposed partition will be 43 acres in size and Parcel 2 will be 5.0 acres in size. The Applicant has complied with this statutory provision.

- (D) *At least one dwelling is located on each parcel created under this paragraph; and*

The existing mobile home will be located on proposed Parcel 1 and the existing stick-built dwelling will be located on proposed Parcel 2. The Applicant has complied with this statutory provision.

- (E) *The landowner of a parcel created under this paragraph provides evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the parcel has been recorded with the county clerk of the county in which the parcel is located. A restriction imposed under this paragraph is irrevocable unless a statement of release is signed by the county planning director of the county in which the parcel is located indicating that the comprehensive plan or land use regulations applicable to the parcel have been changed so that the parcel is no longer subject to statewide planning goals protecting forestland or unless the land division is subsequently authorized by law or by a change in a statewide planning goal for land zoned for forest use or mixed farm and forest use."*

The Planning Director has made this a condition of approval.

The creation of a new lot or parcel in the Nonimpacted Forest Lands Zone is subject to the provisions of Lane Code 16.210(9)(e):

- (a) *The minimum area requirement for the creation of new lots or parcels for land designated as Impacted Forest Land (F-1) is 80 acres. An exception to this area requirement may be made pursuant to LC 16.210(9)(b)-(g) below;*

(e) *A division by partition of a lot or parcel for at least two existing dwellings or manufactured dwellings subject to compliance with these requirements:*

(i) *At least two dwellings or manufactured dwellings lawfully existed on the lot or parcel prior to November 4, 1993;*

As a preface to this narrative, it must be made clear that I interpret this provision to mean that on November 4, 1993 the dwellings must have lawfully existed on the lot or parcel to be partitioned not the respective parcels that are to be created by the partition.

The basic facts as I understand them are as follows: The subject property is currently occupied by a stick-built house that was constructed circa 1900 and a manufactured dwelling. The manufactured dwelling was constructed (placed) in 1977 on property north of Jones Road (County Rd. 482) on the basis of a temporary hardship. The manufactured dwelling was replaced in 1985 near or on its previous location and was granted permanent status through the approval of a special use permit. In 1995 the manufactured dwelling was relocated to its present location south of Jones Road. The property located north and south of Jones Road was considered as one property until 2015 when a legal lot verification determined that Jones Road effectively split the property with County ownership and created two legal lots. The manufactured dwelling and stick-built house are currently located on Legal Lot 2 of that determination.

Based upon the recitation above, I believe that both structures lawfully existed as of November 4, 1993.

The Appellant also argues that the mobile home did not exist on the subject property in 1993 but rather was located on a parcel to the north. In 1977, the mobile home was located north of Jones Road, which separated it from the stick-built dwelling. In 1995, the mobile home was moved, via a replacement dwelling permit, to its present location south of Jones Road.

The property was treated as a single parcel by the County and the property owner until 2015 when it was subject to legal lot verification PA 15-05177. Indeed, in 1991 it was verified as being a single legal lot in PA 91-03270. Since there was no verification that Jones Road had created two separate legal lots in 1993, I believe that it is reasonable to hold that the mobile home was located on the same lot or parcel as the stick-built house on November 4, 1993.

For the reasons explained above, I must conclude that as of November 4, 1993 both dwellings lawfully existed on the subject property.

- (ii) ***Each dwelling or manufactured dwelling complies with the requirements for a replacement dwelling or manufactured dwelling in LC 16.210 (6);***

For reasons not understood by this hearings official, the Planning Director applied the replacement dwelling provisions of Lane Code Chapter 16.211(4). The applicable replacement dwelling standards, of course, are found in LC 16.210(6). However, the standards for replacement dwellings in the two zones are identical.

LC 16.210(6) provides:

- (a) ***The alteration, restoration, or replacement of a lawfully established dwelling or manufactured dwelling is an allowed use without the need for notice and the opportunity for appeal subject to compliance with the general provisions and exceptions in LC Chapter 16, LC 16.210(7) below and with these requirements:***

As indicated earlier in this decision, the provisions of Lane Code 16.210(6)(a)(i) are not consistent with Section 2(b) of Chapter 462 of Oregon Laws 2013, which limits the assessment and taxation findings that are required.

- (i) ***The property owner provides:***

- (aa) ***Building permit or land use application records from the Lane County Land Management Division indicating that the existing dwelling or manufactured dwelling was lawfully constructed or placed on the subject property; or***
- (bb) ***Records from the Lane County Assessment and Taxation Office indicating that the structure has existed on the property and been taxed on a continuous, annual basis from a date that, as determined by the Director, predates zoning that would restrict or regulate the establishment of a dwelling on the subject property.***

The Planning Director has concluded that both dwellings satisfy Lane Code 16.210(6)(a)(i)(aa). A narrow reading of this provision supports this conclusion as the mobile home was lawfully placed on the subject property as a temporary mobile

home. It later became permanent with the approval of a special use permit in 1985. The placement of the stick-built structure preceded zoning of the property.

- (ii) *The dwelling or manufactured dwelling has:*
- (aa) *intact exterior walls and roof structure;*
  - (bb) *indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;*
  - (cc) *interior wiring for interior lights; and*
  - (dd) *a heating system; and*

Both dwellings, as they currently exist, comply with these structural characteristics.

- (vi) *A temporary manufactured home or recreational vehicle approved under LC 16.210(3)(o) above is not eligible for replacement under LC 16.210(6)(a) above; and*

LC 16.210(3)(o) pertains to temporary manufactured homes that are in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the resident or a relative of the resident.

The original temporary permit (MH 1237-77) for the mobile home was approved for the Western Rivers Girl Scout organization. This permit was for a caretaker residence for the existing girl scout camp. There is no indication that the mobile home was to be used in a hardship capacity.

- (ii) *Except for one lot or parcel, each lot or parcel created under LC 16.210(9)(e) above is between two and five acres in size;*

The application is for one 43-acre parcel and one five-acre parcel.



- (iii) *At least one dwelling or manufactured dwelling is located on each lot or parcel created under LC 16.210(9)(e) above;***

The partition is structured so that the stick-built residence will be located on one lot and the manufactured dwelling will be located on the other lot.

- (iv) *A lot or parcel may not be divided under Lane Code 16.210(9)(e) if an existing dwelling on the lot or parcel was approved under a statute, an administrative rule or a land use regulation as defined in ORS 197.015 that required removal of the dwelling or that prohibited subsequent division of the lot or parcel;***

This provision is not applicable.

- (v) *A landowner allowed a division under LC 16.210(9)(e) shall sign a statement that shall be recorded with Lane County Deeds and Records declaring that the landowner and the landowner's successors in interest will not in the future complain about accepted farm or forest practices on nearby lands devoted to farm or forest use;***

The Planning Director has made this a condition of approval.

- (vi) *The land owner of a lot or parcel created under LC 16.210(9)(e) above shall provide evidence that a restriction prohibiting the landowner and the landowner's successors in interest from further dividing the lot or parcel has been recorded with Lane County Deeds and Records. This restriction shall be irrevocable unless a statement of release signed by the Planning Director indicating that the Lane County Rural Comprehensive Plan or land use regulations applicable to the lot or parcel have been changed in such a manner that the lot or parcel is no longer subject to statewide planning goals protecting forest land or unless the land division is subsequently authorized by law or by a change in a statewide planning goal for land zoned for forest use or mixed farm and forest use; and***

The Planning Director has made this a condition of approval.

- (vii) *The Planning Director shall maintain a record of lots and parcels that do not qualify for division under restrictions imposed by LC 16.210(9)(e)(vii) above. The record shall be readily available to the public.***

This is an odd approval standard and not one over which an applicant has any control. The record does not indicate whether the Planning Director currently maintains a record of lots and parcels that do not qualify for division under the restrictions imposed by LC 16.210(9)(e)(vii). I am going to assume that this provision is either aspirational or at least not an approval standard that applies to the Applicant. While it is doubtful that the Hearings Official has any authority over the Planning Director an “informational only” condition of approval has been added to remind the Planning Director that this provision is mandatory.

The Applicant has also argued that his application should be approved under LC 16.290(d)<sup>2</sup>, which reads, in part:

- (d) *A division by partition of a lot or parcel for an existing dwelling subject to compliance with these requirements:***
- (i) *The parcel created for the existing dwelling or manufactured dwelling may not be larger than five acres, except as necessary to recognize physical features such as roads or streams, in which case the parcel shall not be larger than 10 acres;***
  - (ii) *The existing dwelling lawfully existed prior to June 1, 1995;***
  - (iii) *The parcel that does not contain the dwelling is not entitled to a dwelling unless subsequently authorized by law or goal and the parcel either:***
    - (aa) *contains at least 80 acres; or***
    - (bb) *is consolidated with another parcel, and together the parcels contain at least 80 acres.***

The Planning Director interpreted this section to apply only to forestland that was occupied by one dwelling. I agree. This provision clearly talks about the existence of one dwelling and the absence of a dwelling on a second parcel. The Applicant’s interpretation is not a reasonable reading of this textual portion of the Code or of ORS 215.780(2)(d).

### **Conclusion**

The December 27, 2017 denial by the Hearings Official was predicated on the lack of evidence in the record demonstrating that the manufactured dwelling on the subject

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<sup>2</sup> ORS 215.780(2)(d).

property was lawfully placed on that property. Evidentiary submissions during the remand period have affirmatively addressed this deficiency.

**Respectfully Submitted,**



**Gary Darnielle**  
**Lane County Hearings Official**