

LAND MANAGEMENT DIVISION

Date Received: RECEIVED SEP 25 2017



APPEAL OF A HEARINGS OFFICIAL DECISION

PUBLIC WORKS DEPARTMENT 3050 NORTH DELTA HIGHWAY, EUGENE OR 97408
PLANNING: 541-682-3777 BUILDING: 541-682-4651 SANITATION: 541-682-3754

For Office Use Only; FILE # 509 PA15-05195 FEE:

Appellant: See addendum

Mailing address: See Addendum / Representative

Phone: See addendum / Representative Email: See addendum / representative

Signature: [Signature] Date: 9/25/17

Appellant's Representative: Sean Malone, Attorney at Law

Mailing address: 259 E. 5th Ave, Ste 200-C

Phone: 303 859-0403 Email: Sean.Malone8@notra1.com

Signature: [Signature] Date: 9/25/17

LOCATION (subject property) TL 100, 102, 103 17-06-35
TL 1460 17-06-25-30 TL 1601, 2900, 3200, 3203, 3300, 3401, 3402, 3403 17-06-26
Township - Range - Section - Taxlot Subdivision/partition lot/parcel

You have one of two appeal options. Your appeal application will be rejected if it does not contain all the required submittals.

Required Option 1 submittals:

Option 1 (The appellant requests Hearings Official Reconsideration OR Board of Commissioner Review in a Hearing.)

- 1. Fee is \$3,712 appeal fee, payable to Lane County.
2. A copy of the decision being appealed, with the Department file number.
3. Indicate the deadline to submit the appeal.
4. Check one of the items below to identify your party status with the right to appeal the Hearings Official's decision:
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;

Required Option 2 submittals:

Option 2; The appellant requests that the Board **not** conduct a hearing on the appeal and deem the Hearings Official decision the final decision of the County.

1. Fee is a non-refundable \$250 appeal fee, payable to Lane County.
2. A copy of the decision being appealed, with the department file number. File # PA 15-05195
3. Indicate the deadline to submit the appeal. (*Found in the Hearings Official's Decision*) 9/25/17
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.
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;
 - b. An identification of one or more of the following general reasons for the appeal:
 - 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 position of the appellant indicating the issue raised in this appeal to the Board was raised before the close of the record at or following the final evidentiary hearing and whether the appellant wishes the application to be approved, denied or conditionally approved.
6. Any additional information in support of your appeal.

EXPLANATION OF THE APPEAL PROCESS UNDER OPTION 2

LMD Staff will prepare a memorandum (with an Order) for the Board to review the appeal during their regular public meetings as an item under the Public Works section. The parties of record will be notified of the tentative meeting date on which the Board will review the appeal.

There may be no separate discussion of this item. If Board discussion is desired, that item will be considered separately in an Elect to Hear appeal hearing pursuant to Lane Code 14.600.

If the Board approves an Order and elects to not conduct a hearing, the final County land use decision may be appealed to Land Use Board of Appeals.

Please note that the Hearings Official has full discretion to affirm, modify or reverse his or her initial decision pursuant to LC 14.535, and the Board may still elect to hear the appeal pursuant to Lane Code 14.600(2).

Sean T. Malone

Attorney at Law

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Via Hand Delivery

September 25, 2017

Public Works Department
3050 North Delta Highway
Eugene OR 97408
(541) 682-3577

Re: Option 2 Appeal of a Hearings Official decision in PA15-05195

Names of the Appellants

LandWatch Lane County, Lee and Kathy Klein, and Luann and Dennis Kloehn

Authorized Representative for Appellant:

Sean T. Malone
Attorney at Law
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Eugene OR 97401
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Identification of the Decision Sought to Be Reviewed

Appellant hereby appeals the Hearings Official's September 13, 2017, decision affirming, with modifications, the Planning Director's approval of the Oregon Country Fair request (PA15-05195) for a private park within the Rural Residential and Impacted Forest Lands District and a campground within the Rural Residential District. The Hearings Official's decision is attached hereto.

Appeal Option

Appellants request Option 2 as set forth in the County's appeal form. Appellants request that the Board not conduct a hearing on the appeal and deem the Hearing's Official decision the final decision of the County pursuant to LC 14.515(3)(f)(ii).

Standing

Appellant has standing to appeal because appellant appeared before the Hearings Officer in writing and in person for the consolidated hearing on the three applications.

Grounds for Appeal

For an option 2 appeal, Appellant notes that the form does not require that an appellant raise all issues in the appeal from the Hearings Official for appeal. However, Appellant sets forth the following alternative grounds for denial on appeal, including but not limited to the following:

- The Hearings Official misconstrued applicable law and criteria and made inadequate findings not supported by substantial evidence, as outlined below:
 - The Special Use Permit (SUP) facilitates and accommodates the expansion of the nonconforming use (i.e., the annual event known as the Oregon Country Fair), but the County failed to apply the criteria contained in Lane Code 16.251(12). The uses will be held in conjunction with the nonconforming use that allows a nonconforming use that is greater in scope than what has been previously authorized the most recent nonconforming use verification. Pursuant to the annual event, camping occurs in tax lots 1801, 3200, 3402, 3401, and 3403, which is a clear indication the SUP is facilitating and accommodating the increase in the scope of the nonconforming use. These tax lots were acquired after the most recent verification. The Hearings Official's citation to *Huff v. Clackamas County* is inapposite and misplaced.
 - The "private parks" are not private because they are not limited to a particular group or set of persons. Rather, the parks will be open to the public.
 - The Hearings Official approved vague uses that are incapable of being enforced, including consumptive uses, discharges, meal preparation, and so forth. The Hearings Official also found that the subject application does not request approval for any use of the property during the weekend of the Fair, but the Hearings Official also found that camping would occur in areas used for camping during the annual Fair event. Because camping is occurring on F-2 zoned land during the annual event, the finding that camping would occur in areas used for camping during the annual Fair event demonstrates that camping would occur on F-2 zoned land.
 - The Hearings Official failed to require a verification of the nonconforming use (i.e., the annual event known as the Oregon Country Fair) to determine whether the nonconforming use has expanded since its last verification in 1998. A verification of the nonconforming use is necessary to determine the scope of the

nonconforming use and how the SUP will affect or be used in conjunction with the annual event.

- The SUP will have a significant effect on surrounding farm practices, existing uses, and nearby and adjacent properties.
- The SUP impermissibly authorizes a youth camp in the RR-5 zone.
- The SUP is inconsistent with *Central Oregon LandWatch v. Deschutes County*.
- The SUP authorizes uses that are not “recreational” on the F-2 zoned land.
- Enforcement of the conditions of approval are not feasible.
- The traffic impact analysis (TIA) is flawed and not supported by substantial evidence because it was modeled on a small-sized event when it permits much larger events. Furthermore, the TIA authorizes uses to occur in conjunction with the nonconforming use without accounting for those traffic impacts.
- The parks are not contiguous to or located on lands with an accessible park or other outdoor amenity.
- The finding that none of the events are open to the general public is not supported by substantial evidence and contradicted in the record.
- The Hearings Official found that the 3-day annual event experiences traffic issues created by the daily arrival of 18,000 paid attendees, but this fails to account for the fair family or staff at the annual event. It also misrepresents that the annual event is a 3-day event. Appellants have demonstrated that the annual event is much greater in scope, and occurs on the land subject to this application in conjunction with the annual event.
- The Hearings Official found that “it is understood that the activities proposed for these areas will occur within the designated blobs on the maps except that camping will occur in traditional OCF-designated campgrounds.” There is no substantial evidence that designated activities can or will be able to be confined to the “blobs.” The blobs have no geographic references, size, surveys, and so forth. These vagaries make enforcement of distinct uses infeasible, yet the applicant assumes that “it is understood that the activities ... will occur within the designated blobs.” This only further demonstrates the vagaries of the application. To the extent this is considered a condition of approval, it is not feasible to dictate activities within these blobs when there are tens of thousands of people in attendance for the annual event.
- The Hearings Official’s reference to “traditional OCF campgrounds” is unclear in that it appears to sanction prior unlawful expansions of the annual event, which misconstrues applicable law. There is no substantial evidence to identify where these “traditional OCF campgrounds” exist. For example, some campgrounds occur on F-2 zoned property, and have occurred and will continue to occur on tax lots 1801, 3200, 3402, 3401, and 3403.
- The Hearings Officer’s findings that “[n]o amplified noise producing activities are proposed for later than 10 pm” is infeasible to enforce.
- The Hearings Official’s findings are inconsistent in that the Hearings Official identified area 2 as allowing for year-round day camps but then acknowledges that Culture Jam is a week-long, overnight camp.
- For area 2, the Hearings Official found that “[c]amping would occur in areas used for camping during the annual fair event,” but this area was purchased after the

nonconforming use began and after the 1998 verification. Not only are these inconsistent findings but it demonstrates the nexus between the SUP and the nonconforming use, as well as the increase in the nonconforming use.

- The findings are inconsistent because the Hearings Official has conditioned areas to restrict camping while elsewhere in the findings it is determined that camping would occur where it occurs in conjunction with the annual event. Furthermore, conditioning camping areas to particular blobs that have not been geographically identified is not feasible.
- The Hearings Official's findings are inconsistent in that the opinion states that drum workshops would last until 11pm and that no drumming would occur after dark.
- The Hearings Officer's findings related to the Beaver Open are not supported by substantial evidence. The Beaver Open is a four-day event that includes camping, utilizes structures, and those structures occur outside the blob.
- The finding that "camping for activities involving less than 500 persons would be provided in the field at the South end of Bus Road" is vague and unenforceable because it is unclear where or what constitutes the field at the south end of bus road. The south end of bus road is zoned F-2 where camping is not permitted.
- The order contains inconsistent findings by using different numbers of people per vehicle.
- The order contains inconsistent findings in that it refers to area 3 as consisting of tax lots 100 and 103.
- The requirement that OCF will provide adequate signage indicating fire danger levels at each of the entrance points to the property is unreasonably subjective and vague.
- Regarding fire danger, the Hearings Official alleges that conditions of approval will require the presence of one or more of the fire trucks but fails to include any such conditions in the order.
- The findings are inconsistent in that they refer to showers for Culture jam but also finds that no showers will be used for events.
- The Hearings Official's finding that a 24 percent increase in the average daily traffic on Suttle Road will not degrade the level of service is not supported by substantial evidence.
- The Hearings Official's finding that area 2 includes tax lots 1801, 3403, 3401, 3402, and 3200 is in error and not supported by substantial evidence. This not only demonstrates the vagaries of the application and order but also the inconsistent nature of many of the findings.
- The findings are inconsistent in that they state that campgrounds will be used year-round for day camps and retreats with a maximum of 100 persons while also stating that camping is associated with the 500 person events in area 3, as well as that camping would occur in areas used for camping during the annual Fair event.
- The finding that "[a]pplicant's staff will enforce smoking and other activities" is unclear, vague, and not feasible.
- The findings are inconsistent in finding that the showers are not permitted and further that gray water from showers will be contained and transported off-site.
- The findings are inconsistent for pyrates cove and the barter fair are inconsistent.

- The findings are inconsistent in that the Hearings Official found that camping would occur where it occurs during the annual event but also purports to not allow use of the F-2 zoned property within areas 3 and 4 for campground use.
- The findings are inconsistent in that they allege, at times, that there will not be a significant increase in fire hazard or significantly increases fire suppression costs, and, at other times, says there will be such an increase.
- The Hearings Official's finding that the subject application does not request approval for any use of the property during the weekend of the Fair is not supported by substantial evidence.
- All arguments (both written and oral) submitted on behalf of the appellants are incorporated by reference into this section of the appeal addendum as specific issues on appeal, including the attached comments and emails. This also includes the audio recording before the hearings official's hearing and other written submissions.

Appeal Fee

Please find attached a check in the amount of \$250.00 for the appeal fee.

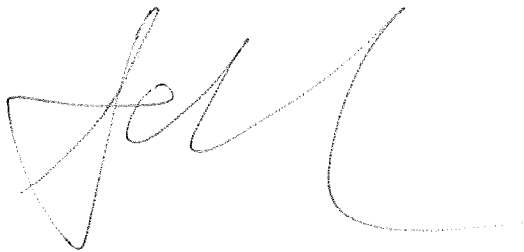
Copy of the Decision

A copy of the decision being appealed is attached hereto.

Position of Appellants

Appellants submitted all information containing all applicable arguments before the close of the record, and, as stated above, appellant incorporates those arguments herein.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sean T. Malone', written in a cursive style.

Sean T. Malone
Attorney for Appellants

cc: appellants