



**MEMORANDUM**

**TO:** Board of County Commissioners

**FROM:** Caroline House, Senior Planner

**DATE:** February 16, 2022

**RE:** An appeal of the Hearings Officer’s decision approving a single-family dwelling in the Forest Use (F2) Zone; Land Use File No. 247-21-000756-CU and Appeal No. 247-22-000109-A

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On February 23, 2022, the Board of County Commissioners (“Board”) will consider hearing an appeal of the Hearings Officer’s decision approving a conditional use permit to establish a single-family dwelling in the Forest Use (F2) Zone.

**I. PROCEDURAL HISTORY**

A public hearing before a Hearings Officer was held on November 30, 2021. The Hearings Officer issued an approval on January 28, 2022. Mr. Robert H. Windlinx, Jr., as a Trustee of the Windlinx Ranch Trust, filed a timely appeal of the Hearings Officer’s decision on February 9, 2022.

**II. PROPOSAL**

The applicant is requesting conditional use approval to establish a single-family dwelling in the Forest Use (F2) Zone. The requested Forest Use dwelling type is a “Template Dwelling”.

**III. THE WINDLINX RANCH TRUST APPEAL**

The Windlinx Ranch Trust, the appellant, requests the Board review the Hearings Officer’s decision on appeal to address the following summarized issues.

- The applicant does not have a long-term access agreement to the subject property.
- The applicant cannot legally use the County’s property line adjustment process to increase property benefited by an easement.
- The applicant has not met the template dwelling test requirements for the number of lots or parcels within the required 160-acre template.

- The subject property is capable of producing more wood fiber than documented by the applicant.
- The applicant has incorrectly illustrated the 160-acre template used to satisfy the template test requirements.
- The applicant's proposal will have significant impacts on the Windlinx Ranch Trust's tree farm and increase the cost of accepted forest practices.
- The applicant's proposal will significantly increase fire hazard and fire protection costs.

#### **IV. BOARD OPTIONS**

There are two Orders attached to this memo; one to hear the appeal and one to decline to hear the appeal. In determining whether to hear an appeal, the Board may consider only:

1. The record developed before the Hearings Officer;
2. The notice of appeal; and
3. Recommendation of staff<sup>1</sup>

In addition, if the Board decides to hear the appeal, it may consider providing time limits for public testimony.

#### Reasons not to hear

The Hearings Officer's decision is well written and reasoned, and could be supported, as the record exists today on appeal to the Land Use Board of Appeals (LUBA). The appeal issues are primarily matters of state law interpretation and a Board decision would not be given deference if appealed to LUBA. Both parties were well represented by land use attorneys. For these same reasons and due to the increased cost to the client to prepare for a Board hearing, the applicant requests the Board not hear the appeal.

#### Reasons to hear

The Board may want to take testimony and make interpretations relating to the Hearings Officer's decision. The Board may also want to reinforce or refute some or all of the decision findings/interpretations prior to Land Use Board of Appeals review.

If the Board decides the Hearings Officer's decision shall be the final decision of the county, then the Board shall not hear the appeal and the party appealing may continue the appeal as provided by law. The decision on the land use application and associated appeal becomes final upon the mailing of the Board's decision to decline review.

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<sup>1</sup> Deschutes County Code 22.32.035(D)

## **V. STAFF RECOMMENDATION**

Staff recommends the Board not hear this appeal, because staff believes the appellant was able to present all relevant evidence at the hearing and during the open record period. Further, staff agrees with the Hearings Officer's analysis and decision. Finally, the appeal issues are primarily matters of state law interpretation.

## **VI. 150-DAY LAND USE CLOCK**

The 150<sup>th</sup> day on which the County must take final action on this application is April 17, 2022.

## **VII. RECORD**

The record for land use file no. 247-21-000756-CU and the notice of appeal are presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-21-000756-cu-kerr-template-dwelling>

Attachments:

1. DRAFT Board Order 2022-008 Accepting Review of the Hearings Officer's Decision
2. DRAFT Board Order 2022-008 Declining Review of the Hearings Officer's Decision

REVIEWED  

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LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Accepting Review of Hearings \*  
Officer’s Decision on File No. 247-21- \* ORDER NO. 2022-008  
000756-CU.

WHEREAS, on January 28, 2022, the Hearings Officer approved File No. 247-21-000756-CU;  
and

WHEREAS, on February 9, 2022, the Windlinx Ranch Trust, the Appellant, appealed (Appeal  
No. 247-22-000109-A) the Deschutes County Hearings Officer’s Decision on File No. 247-21-  
000756-CU; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code (“DCC”) allow  
the Deschutes County Board of County Commissioners (“Board”) discretion on whether to hear  
appeals of Hearings Officer’s decisions; and

WHEREAS, the Board has given due consideration as to whether to review this application  
on appeal; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, HEREBY  
ORDERS as follows:

Section 1. That it will hear on appeal Appeal No. 247-22-000109-A pursuant to Title 22  
of the DCC and other applicable provisions of the County land use ordinances.

Section 2. The appeal shall be heard *de novo*.

Section 3. Staff shall set a hearing date and cause notice to be given to all persons or  
parties entitled to notice pursuant to DCC 22.24.030 and DCC 22.32.030.

Section 4. Pursuant to DCC 22.32.024, the Board waives the requirement that the  
appellants provide a complete transcript for the appeal hearing.

Section 5. Pursuant to DCC 22.32.035(D), to date the only documents placed before and  
considered by the Board are the notice of appeal, recommendations of staff, and the record

developed before the lower hearings body for File No. 247-21-000756-CU as presented at the following website:

<https://www.deschutes.org/cd/page/247-21-000756-cu-kerr-template-dwelling>

Going forward, all documents further placed before, and not rejected by, the Board shall be added to the aforementioned website, and that website shall be the Board's official repository for the record in this matter.

DATED this \_\_\_\_ day of February, 2022.

BOARD OF COUNTY COMMISSIONERS

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PATTI ADAIR, Chair

ATTEST:

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PHIL CHANG, Vice Chair

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Recording Secretary

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ANTHONY DeBONE, Commissioner



DATED this \_\_\_\_ day of February, 2022.

BOARD OF COUNTY COMMISSIONERS

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PATTI ADAIR, Chair

ATTEST:

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PHIL CHANG, Vice Chair

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Recording Secretary

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ANTHONY DeBONE, Commissioner