



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 31, 2022

SUBJECT: Board decision to hear or not hear an appeal of the Hearings Officer's approval of a Declaratory Ruling to determine whether a Guest Ranch has been initiated.

RECOMMENDED MOTION:

Staff recommends the Board not hear the appeal.

BACKGROUND AND POLICY IMPLICATIONS:

On August 31, 2022, the Board of County Commissioners ("Board") will consider hearing an appeal of the Hearings Officer's approval of a Declaratory Ruling to determine whether a Guest Ranch has been initiated.

I. PROCEDURAL HISTORY

On March 29, 2022, Central Oregon LandWatch ("COLW") submitted a letter to the record expressing concern for the application. Two adjacent neighbors to the subject property also submitted letters expressing concern of the application. Based on these comments, staff referred the application to a public hearing before the Hearings Officer to make a ruling on whether the use of the Guest Ranch has been initiated. The public hearing was held on June 16, 2022, and the Hearings Officer issued a decision on August 5, 2022, which determined that the use had been initiated. On August 17, 2022, COLW filed a timely appeal (247-22-000673-A) of the Hearings Officer's decision.

II. PROPOSAL

The Guest Ranch applied for a Declaratory Ruling to determine if the Guest Ranch use has been initiated. The Guest Ranch was approved for ten (10) overnight lodging units and a lodge/kitchen building, along with passive activities and food services. In total, the Hearings Officer found that approximately \$900,000 was spent in association with the Guest Ranch development, including construction of some cabins, installation of utilities, septic systems, trenching, grading, and other site work. The Hearings Officer concluded that these actions

represented a good-faith effort in terms of time, labor, and money. Consequently, the Hearings Officer found the Guest Ranch use was initiated.

III. COLW APPEAL

COLW, the appellant, requests the Board review the Hearings Officer's decision on appeal to address the following summarized issues.

- The Hearings Officer decision misinterprets and misapplies DCC 22.20.015, which prohibits the County from making any decision for a property that is in direct violation of a condition of approval of a prior permit.
- The applicant is not the holder of the originally approved land use permits and therefore lacks the authority to apply for a Declaratory Ruling that interprets a previously issued land use permit.
- The previously approved land use permits became void on June 26, 2007 after the use was not fully initiated and the land use permits are therefore void for all purposes.
- The use of the Guest Ranch was abandoned for fifteen (15) years and during that time the code provisions for a Guest Ranch were amended.
- Pursuant to ORS 215.130 (7), any lawful use at the time of amendment may not be resumed after a period of abandonment unless it conforms to the new regulations applicable at the time of the proposed resumption. The use was abandoned and may not be resumed without demonstrating conformance with the new regulations.
- The decision failed to apply 22.35.020(A)(3), as construction was authorized, not required. [Staff believes the correct citation should be to DCC 22.36.020(A)(3).]

IV. BOARD OPTIONS

There are two versions of Order No. 2022-045 attached to this staff report; 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 staff¹

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

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. Lastly, there was participation from adjacent neighbors in the land use process.

¹ Deschutes County Code 22.32.035(D)

Hearing format

Under Deschutes County Code (“DCC”) 22.32.027(B)(1), a review before the Board shall be on the record. Under DCC 22.32.027(B)(3), the Board may choose to hear a matter *de novo* at their sole discretion. The appellant, COLW, does not request a specific format for the appeal hearing.

Reasons not to hear

The Hearings Officer’s decision is reasoned, well written, and could be supported, as the record exists today, on appeal to LUBA.

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 appeals becomes final upon the mailing of the Board’s decision to decline review.

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.

VI. 150-DAY LAND USE CLOCK

The 150th day on which the County must take final action on these applications is November 7, 2022.

VII. RECORD

The record for land use file nos. 247-22-000246-DR, 247-22-000673-A is as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-22-000246-dr-declaratory-ruling-initiation-use-guest-ranch>

The website includes the appeal application filed by COLW.

BUDGET IMPACTS:

None.

ATTENDANCE:

Avery Johnson, Assistant Planner
Anthony Raguine, Principal Planner