



APPEAL APPLICATION – BOARD OF COUNTY COMMISSIONERS

FEE: _____

EVERY NOTICE OF APPEAL SHALL INCLUDE:

1. A statement describing the specific reasons for the appeal.
2. If the Board of County Commissioners is the Hearings Body, a request for review by the Board stating the reasons the Board should review the lower decision.
3. If the Board of County Commissioners is the Hearings Body and *de novo* review is desired, a request for *de novo* review by the Board, stating the reasons the Board should provide the *de novo* review as provided in Section 22.32.027 of Title 22.
4. If color exhibits are submitted, black and white copies with captions or shading delineating the color areas shall also be provided.

It is the responsibility of the appellant to complete a Notice of Appeal as set forth in Chapter 22.32 of the County Code. The Notice of Appeal on the reverse side of this form must include the items listed above. Failure to complete all of the above may render an appeal invalid. Any additional comments should be included on the Notice of Appeal.

Staff cannot advise a potential appellant as to whether the appellant is eligible to file an appeal (DCC Section 22.32.010) or whether an appeal is valid. Appellants should seek their own legal advice concerning those issues.

Appellant's Name (print): Tumalo Lavender Property LLC Phone: (541) 383-2441

Mailing Address: 3318 Rademacher Place City/State/Zip: Bend, OR 97703

Email Address: holly@tumulolavender.com

Land Use Application Being Appealed: 247-23-000162-CU

Property Description: Township 16 Range 12 Section 9 Tax Lot 501

Appellant's Signature:  Date: June 26, 2023

By signing this application and paying the appeal deposit, the appellant understands and agrees that Deschutes County is collecting a deposit for hearing services, including "whether to hear" proceedings. The appellant will be responsible for the actual costs of these services. The amount of any refund or additional payment will depend upon the actual costs incurred by the county in reviewing the appeal.

Except as provided in section 22.32.024, appellant shall provide a complete transcript of any hearing appealed, from recordings provided by the Planning Division upon request (there is a \$5.00 fee for each recording copy). Appellant shall submit the transcript to the planning division no later than the close of

(This page may be photocopied if additional space is needed.)

ATTACHMENT 1

June 26, 2023

Haleigh King, Associate Planner
Deschutes County Community Development Department
117 NW Lafayette Avenue
Bend, Oregon 97703

Haleigh.King@deschutes.org

SUBJECT: Deschutes County File Nos. 247-23-000162-CU – BOCC Appeal Application

Ms. King,

On June 14, 2023, Deschutes County Hearings Officer Gregory Frank (the “**Hearings Officer**”) issued a decision of denial for a conditional use permit for a secondary accessory farm dwelling in the Multiple Use Agricultural 10-acre (“**MUA-10**”) zone submitted by Tumalo Lavender Property LLC, the applicant (“**Applicant**”). The Applicant files this appeal pursuant to Deschutes County Code (“**DCC**”) Chapter 22.32. Further, the Applicant request that the Board of County Commissioners (“**BOCC**”) hear the appeal “*limited de novo*” as allowed by DCC 22.32.027(B)(4).¹ Specifically, the Applicant asks the BOCC to limit the issues on appeal to only the following:

- Interpretation of DCC 18.116.070 (Hearing Officer’s Decision pages 10-13)
- Application of that interpretation to DCC 18.32.030(G) (Hearing Officer’s Decision pages 20-23)
- Application of DCC 18.116.070 to subject application (Hearing Officer’s Decision pages 32-33)

All three aforementioned issues overlap and stem from the Hearing Officer’s interpretation of DCC 18.116.070 governing the different classes of manufactured housing allowed in different zones throughout the County. The Hearings Officer specifically found that “all relevant approval criteria were met by the application in this case excepting for DCC 18.116.070.” Accordingly, if the BOCC does not agree with the Hearings Officer’s interpretation of DCC 18.116.070, the subject Application should be approved with the conditions noted by staff and the Hearings Officer.

The BOCC should review the Hearings Officer decision because a careful examination of DCC 18.116.070 reveals that the provision is vague, inconsistent, and fails to provide clear guidelines for land use decisions. This was even stated by the Hearings Officer in his written decision. The County hasn’t clearly outlined the definition nor the distinction of the different classifications of manufactured homes and where they are and are not allowed. In fact, there is not even a clear distinction within the industry regarding the classification of manufactured homes. The lack of clarity in the DCC has resulted in conflicting interpretations and arbitrary determinations

¹ DCC 22.32.027(B)(4) provides as follows:

“4. The Board may, at its discretion, determine that it will limit the issues on appeal to those listed in an appellant’s notice of appeal or to one or more specific issues from among those listed on an applicant’s notice of appeal.”

which will have profound ramifications on future land use decisions for the County. The ambiguity of the language used in the code has led to confusion among property owners and planning authorities staff.

The Applicant understands that when accepting appeals, the BOCC prefers to conduct a *de novo* review. However, DCC 22.32.027(B)(4) would not be included in the Deschutes County Code unless exceptional circumstances at times warrant *limited de novo* review. The Applicant asserts that this is one of those exceptional circumstances. Notably, no opposing party raised DCC 18.116.070. Instead, County staff on their own volition sought the Hearings Officer's interpretation of this clearly ambiguous provision. The Hearing Officer, in turn, asked staff to provide clarification on the issue during the open record period following the initial public hearing. Staff provided that additional information in a letter in the record dated May 23, 2023. In that letter, staff specifically suggested a broad interpretation of DCC 18.116.070 that would have led to the approval of the subject application. Nevertheless, the Hearings Officer rejected staff's proffered interpretation, resulting in the denial of the application and necessitating the subject appeal.

Although the Applicant recognizes that County staff intended no ill will and did not set out to derail the subject application, there is no doubt that County staff did elect to utilize these quasi-judicial proceedings (paid for by the Applicant) to gain clarity on what staff otherwise acknowledge was an ambiguous DCC provision. In so doing, the Hearing Officer issued an interpretation of DCC 18.116.070 that presumably is not favored by even County staff, resulting in the unintentional denial of the subject application. The Applicant requests a *limited de novo* review specifically to limit the complexity and scope of the appeal proceedings before the BOCC, thereby making the appeal economically viable for the Applicant. The Applicant understands that precedent-setting public policy decisions are sometimes made during quasi-judicial land use proceedings, but the Applicant simply cannot afford to pay twice for the same proceedings that in this case are intended to benefit the entire Deschutes County Community.

Additionally - and perhaps most importantly - if the County's intention going forward is to rely on an interpretation of the ambiguous and poorly phrased DCC 18.116.070 rather than amend that code provision, the Applicant asserts that such an interpretation should be issued by the BoCC rather than by an appointed Hearings Officer. The Applicant means no disrespect to Mr. Frank. But as noted above, the Hearings Officer ignored the context of DCC 18.116.070 and the County-wide implications of limiting the types of manufactured homes for certain land uses, thereby limiting a necessary and affordable housing option for many County constituents. The Applicant suspects that these unintended policy ramifications negatively influencing the County's already strained housing supply are precisely why County staff advocated for a broader interpretation of DCC 18.116.070.

To clarify, the Applicant is not requesting a "record review" as contemplated by DCC 22.32.027(B)(1).² Instead, the Applicant's understanding is that by accepting the appeal *limited de novo*, the record in this matter will nevertheless be re-opened to include additional evidence and testimony in addition to the record already developed before staff and the Hearings Officer as required by DCC 22.32.030(D).³ However, any additional evidence, testimony, or argument raised by the Applicant, other parties, or County staff must then be directed at the issues identified in the BOCC's order accepting the *limited de novo* appeal.

² DCC 22.32.027(B)(1) provides as follows:

"1. Review before the Board, if accepted, shall be on the record except as otherwise provided for in DCC 22.32.027."

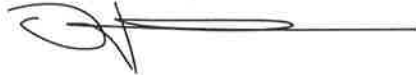
³ DCC 22.32.030(D) provides as follows:

"D. The record of the proceeding from which appeal is taken shall be a part of the record on appeal."

The Applicant notes that the BOCC has plenty of time for these appeal proceedings because the statutory deadline is not until September 17, 2023. In the unlikely event that more time is needed, the Applicant commits to working with County staff to ensure that the BOCC has the necessary time to consider this important issue.

Last, if accepting this appeal, the Applicant asks that the BOCC waive the transcript requirement as allowed by DCC 22.32.024(D). I thank you for your consideration of this appeal application request for a BOCC hearing.

Sincerely,

A handwritten signature in black ink, appearing to be "Holly Olson", written over a horizontal line.

Holly Olson
Tumalo Lavender Property, LLC