



MEMORANDUM

TO: Deschutes County Board of County Commissioners

FROM: Haleigh King, AICP, Associate Planner

DATE: August 2, 2023

RE: Public Hearing: Deschutes County Land Use File Nos. 247-23-000162-CU, 23-516-A: Secondary Accessory Farm Dwelling

The Board of County Commissioners (Board) is conducting a Public Hearing on August 9, 2023, to consider a request for a secondary accessory farm dwelling. The application and appeal are identified as file nos. 247-23-000162-CU, 23-516-A. The subject property is located approximately 1.4 miles north of Tumalo, between Cline Falls Road and Gerking Market Road. The property is addressed at 19825 Connarn Road, and is further identified on County Assessor's Map 16-12-19 as tax lot 501. A location map is included as **Attachment E**.

I. BACKGROUND

The subject 9.70-acre property is currently in farm use consisting primarily of lavender plant production and pasture grasses. The subject property is located approximately 1.4 miles north of Tumalo, between Cline Falls Road and Gerking Market Road. The property is addressed as 19825 Connarn Road, and is further identified on County Assessor's Map 16-12-19 as tax lot 501. The subject property is zoned Multiple Use Agricultural (MUA10) and is within the Airport Safety (AS) Combining Zone.

The Applicant, Tumalo Lavender Property, LLC, has requested a Conditional Use Permit to establish a secondary accessory farm dwelling using an existing manufactured home. The secondary accessory farm dwelling is proposed in an existing, Class A manufactured home located on the southeast side of the property. The manufactured home was previously permitted as a Temporary Medical Hardship Dwelling in 2010 and again in 2015. In the southern portion of the property, the property is developed with a stick-built single-family dwelling that is within the larger agricultural structure and was permitted in 2005 which allowed the central portion of an existing barn to be converted into the primary residence.

Staff referred the Conditional Use Permit application to a public hearing due to a number of interpretative questions. A public hearing before a Hearings Officer was held on May 16, 2023. The Hearings Officer issued a denial on June 14, 2023. Ms. Olson (the Applicant) filed a timely appeal of the Hearings Officer's denial on June 26, 2023. In a Consideration to Hear on July 12, 2023, the Board agreed to hear the appeal limited *de novo* in a Public Hearing.

II. HEARINGS OFFICER DECISION

The Deschutes County Hearings Officer rendered a decision denying the Applicant's request for a Conditional Use Permit for the secondary accessory farm dwelling on the grounds that:

- The Hearings Officer interpreted DCC 18.116.070 (A)(1) to require Class A manufactured homes (with exceptions for CH zoned property and also R-1 and SM zones which allow caretaker's residences) to be used as "primary dwellings." The Hearings Officer concluded that the Applicant's proposed use of a Class A manufactured home does not satisfy the requirements of DCC 18.116.070.
- The Hearings Officer found that all relevant approval criteria were met by the applicant in this case, except for DCC 18.116.070. On the basis that the application did not meet the requirements of DCC 18.116.070 the application was denied.

III. APPEAL FROM APPLICANT (247-23-000516-A)

The Applicant (Tumalo Lavender LLC) submitted a timely appeal of the Hearings Officer's decision on June 26, 2023. The Applicant requested the Board conduct a limited *de novo* Public Hearing to review the following issues:

- 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)

IV. STAFF COMMENT

As Staff noted in the Hearing's Officer proceedings, the construction of DCC 18.116.070 is unclear on whether a Class A manufactured home can be utilized or established as a secondary accessory farm dwelling. It is clearly stated in DCC 18.116.070(B) that a Class C manufactured home can be utilized as a secondary accessory farm dwelling in DCC 18.116.070(B). However, the Hearings Officer found that a Class A manufactured home can only be utilized as a "primary dwelling" based on the construction of DCC 18.116.070(A).

Staff believes this provision for Class C manufactured homes to be used as secondary accessory farm dwellings was intended to allow Class C manufactured homes to be utilized for this specific use on properties where otherwise a Class C manufactured home would not be permitted. In other

words, DCC 18.116.070(A)(1) allows Class A and B in a large variety of situations and (B)(2) is an exception to the implicit preclusion of Class C manufactured homes in the .070(A)(1) scenarios.

V. BOARD CONSIDERATION

The Board has agreed to hear the appeal limited *de novo*. The Board will hear and consider the report by staff, the applicant's presentation and written submittal, and any member of the public that wishes to give testimony or provide written comments directed towards the limited topics of the appeal. The record is available on the project website listed below.

As a reminder to the Board, the applicant, and any member of the public that wishes to give testimony, the proceedings will be limited *de novo*. A limited *de novo* review means that the Board will limit the issues on appeal to those listed in the appellant's notice of appeal, as listed below:

- 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)

VI. 150-DAY LAND USE CLOCK

The application for 247-23-000162-CU was considered complete and the 150-day clock started on April 6, 2023. At the time the Hearings Officer decision was issued, the 150th day was September 17, 2023. However, the applicant initiated a toll from July 14, 2023 to August 9, 2023 which extended the clock by 27 days.

The 150th day on which the County must take final action on this application is October 14, 2023.

VII. RECORD

The record for File No. 247-23-000162-CU and the Appeal No. 247-23-000516-A are as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/247-23-000162-CU>

VIII. NEXT STEPS

At the conclusion of the Public Hearing, the Board can choose one of the following options:

- Continue the hearing to a date and time certain;
- Close the oral portion of the hearing and leave the written record open to a date and time certain;
- Close the hearing and commence deliberations; or

- Close the hearing and schedule deliberations for a date and time to be determined.

ATTACHMENT(S):

Attachment A – 2023-06-14 Hearing Officer Decision 23-162-CU

Attachment B – 2023-06-26 Notice of Appeal

Attachment C – Deschutes County Code Sections 18.116.050 and 18.116.070

Attachment D – Board Order No 2023-029 to hear appeal limited *de novo*

Attachment E – Location Map