



MEMORANDUM

TO: Board of County Commissioners

FROM: Cynthia Smidt, Associate Planner

DATE: July 26, 2021

RE: Appeal of Hearings Officer's approval of an application to replace a dwelling in the Exclusive Farm Use Zone, and the Landscape Management and Wildlife Area Combining Zones.

On August 4, 2021 the Board of County Commissioners (Board) will consider hearing an appeal of Hearings Officer decision (247-21-000263-A, 247-21-000340-LM, and 247-21-000070-AD) approving a proposal for a replacement dwelling in the Exclusive Farm Use Zone, and the Landscape Management and Wildlife Area Combining Zones.

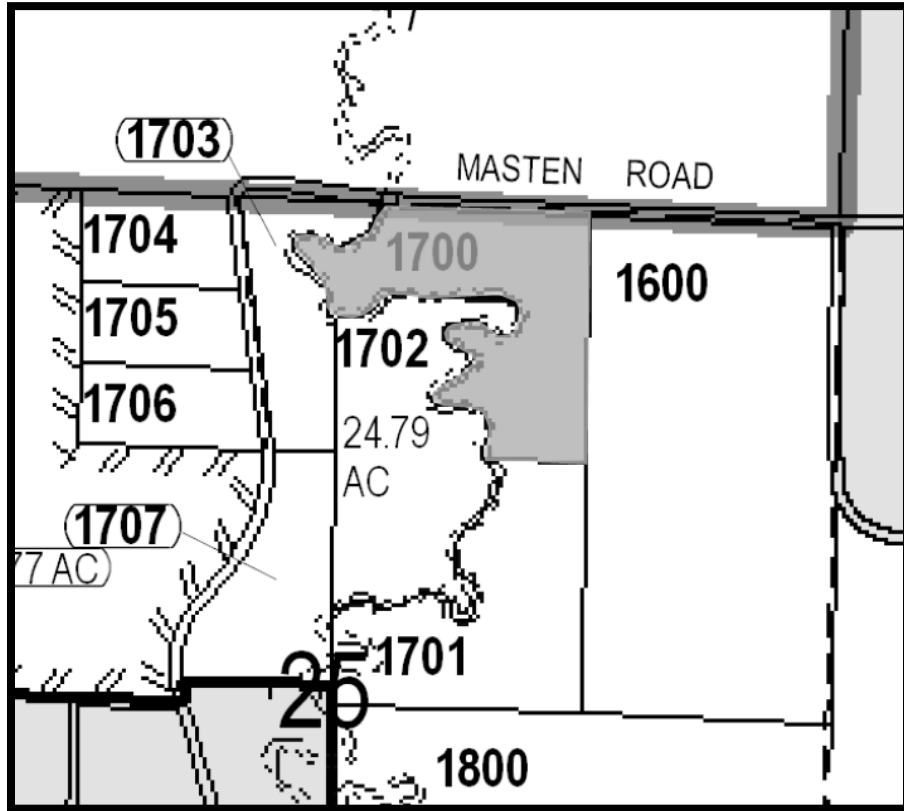
I. BACKGROUND

Robert Kim Reed and Karen Reed submitted a request for an Administrative Determination and Site Plan review for a replacement dwelling. The 25.44-acre subject property is located at 50745 Masten Road, which is adjacent to the Little Deschutes River and southwest of La Pine city limits by approximately 4.5 miles. The subject property is shown below in Figure 1.

The request includes replacing the existing single-family dwelling that was established in 1949¹. The existing development on the property is located in the northern region of the property adjacent to Masten Road. The proposed replacement dwelling will be located in an upland area among a cluster of trees that is southeast of the existing dwelling by approximately 700 feet and adjacent to the eastern property boundary. The proposed dwelling location will also be adjacent to a 30-foot vehicular access easement, which runs parallel to the eastern property boundary. This access easement is primarily used by the neighboring property to the south (50645 Masten Road, Tax Lot 1701 shown below in Figure 1), which is owned by Ronald and Rachel Thompson, the appellants in this case.

¹ The dwelling was lawfully established in 1949 and then a structural addition was constructed in the 1970s.

Figure 1 - Vicinity Map



II. HEARINGS OFFICER DECISION

There were two matters before the Hearings Officer:

1. An appeal of an administrative decision approving the establishment of a replacement dwelling in the Exclusive Farm Use (EFU), and Wildlife Area Combining (WA) Zone (File 247-21-000263-A and 247-21-000070-AD); and
2. The applicant's request for approval of a Visible Landscape Management Review in the Landscape Management Combining (LM) Zone (File 247-21-000340-LM)

On June 10, 2021, the Hearings Officer issued a decision affirming staff's approval of the replacement dwelling in the EFU Zone as part of File 247-21-000070-AD, and approved the site plan review in File 247-21-000340-LM Zone. The Hearings Officer's decision included several conditions of approval typical of this type of land use application.

III. RONALD AND RACHEL THOMPSON APPEAL

The appellants, Ronald and Rachel Thompson, appeal the Hearings Officer decision, and indicate various assignments of error in their notice of appeal. The following summarizes their concerns:

- Hearings Officer missed or ignored main points of appeal
- Hearings Officer made false statements
- Hearings Officer made improper findings regarding the access easement
- The hearing process and initial staff decision contained procedural irregularities

The appellants have not stated whether they would like the hearing before the Board be heard de novo, limited de novo, or on the record.

IV. BOARD OPTIONS

There are two versions of Order No. 2021-035 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 staff²

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 (LUBA) review.

If the Board chooses to hear this matter, staff notes that the applicant has requested that it be heard on the record. The appellants have not stated whether they would like the hearing before the Board be heard de novo, limited de novo, or on the record. Under DCC 22.32.027(B)(3) the Board may choose to hear a matter de novo at their sole discretion.

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.
- The applicant agrees with the Hearings Officer's decision and thus requests that the Board not hear the appeal.

If the Board decides that 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

² Deschutes County Code (DCC) 22.32.035(B) and (D)

provided by law. The decision on the land use applications 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 that the appellants were able to present all relevant evidence at the hearing before the Hearings Officer. Staff agrees with the Hearings Officer's analysis and decision. In addition, staff does not believe the Hearings Officer decision presents a policy issue.

VI. 150-DAY LAND USE CLOCK

The two land use permits, 247-21-00070-AD and 247-21-000340-LM, were submitted and considered complete at different times. However, during the public hearing before the Hearings Officer, the applicant agreed to extend the review clock for File 247-21-000070-AD for 48 days in order to match the review clock of File 247-21-000340-LM. The 150th day on which the County must take final action on these applications is September 10, 2021.

VII. RECORD

The record for appeal File 247-21-000628-A (247-21-000263-A, 247-21-000340-LM, and 247-21-000070-AD) is as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-21-000263-247-21-000340-lm-and-247-21-000070-ad-replacement-dwelling-exclusive-farm-use>

Attachments:

Document	Item No.
2021-07-26 DRAFT Board Order 2021-035 Accept to Hear	1
2021-07-26 DRAFT Board Order 2021-035 Decline to Hear	2

REVIEWED

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 in File Nos. 247-21- * ORDER NO. 2021-035
000263-A, 247-21-000340-LM, and 247-21-
000070-AD.

WHEREAS, on June 10, 2021, the Hearings Officer approved Application Nos. 247-21-000263-A, 247-21-000340-LM, and 247-21-000070-AD; and

WHEREAS, on June 23, 2021, Ronald and Rachel Thompson, the Appellants, appealed (File No. 247-21-000628-A) the Deschutes County Hearings Officer’s Decision on File Nos. 247-21-000263-A, 247-21-000340-LM, and 247-21-000070-AD; and

WHEREAS, Section 22.32.035 of the Deschutes County Code allows 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 application 247-21-000628-A pursuant to Title 22 of the Deschutes County Code 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 Section 22.32.024, the Board waives the requirement that the appellants provide a complete transcript for the appeal hearing.

Section 5. The record for file nos. 247-21-000263-A, 247-21-000340-LM, and 247-21-000070-AD (appeal file no. 247-21-000628-A) is as presented at the following website:

<https://www.deschutes.org/cd/page/247-21-000263-247-21-000340-lm-and-247-21-000070-ad-replacement-dwelling-exclusive-farm-use>

DATED this ____ day of _____, 2021.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DeBONE, Chair

ATTEST:

PHIL CHANG, Vice Chair

Recording Secretary

PATTI ADAIR, Commissioner

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Order Denying Review of Hearings *
Officer's Decision in File Nos. 247-21- * ORDER NO. 2021-035
000263-A, 247-21-000340-LM, and 247-21-
000070-AD.

WHEREAS, on June 10, 2021, the Hearings Officer approved Application Nos. 247-21-000263-A, 247-21-000340-LM, and 247-21-000070-AD; and

WHEREAS, on June 23, 2021, Ronald and Rachel Thompson, the Appellants, appealed (File No. 247-21-000628-A) the Deschutes County Hearings Officer's Decision on File Nos. 247-21-000263-A, 247-21-000340-LM, and 247-21-000070-AD; and

WHEREAS, Section 22.32.027 of the Deschutes County Code allows the Deschutes County Board of County Commissioners ("Board") discretion on whether to hear appeals of Hearings Officers' 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 not hear on appeal application 247-21-000628-A pursuant to Title 22 of the Deschutes County Code and other applicable provisions of the County land use ordinances.

Section 2. Pursuant to DCC 22.32.015, the County shall refund any portion of the appeal fee not yet spent processing the subject application. If the matter is further appealed to the Land Use Board of Appeals and the County is required to prepare a transcript of the hearing before the Hearings Officer, the refund shall be further reduced by an amount equal to the cost incurred by the County to prepare such a transcript.

Section 5. The record for file nos. 247-21-000263-A, 247-21-000340-LM, and 247-21-000070-AD (appeal file no. 247-21-000628-A) is as presented at the following website:

DATED this ____ day of _____, 2021.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DeBONE, Chair

ATTEST:

PHIL CHANG, Vice Chair

Recording Secretary

PATTI ADAIR, Commissioner