

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

DECISION OF THE DESCHUTES COUNTY BOARD OF COUNTY COMMISSIONERS

FILE NUMBER(S): 247-23-000162-CU, 247-23-000516-A

**SUBJECT PROPERTY/
OWNER/APPLICANT:** Mailing Name: TUMALO LAVENDER PROPERTY LLC
Map and Taxlot: 1612190000501
Account: 132493
Situs Address: 19825 CONNARN RD, BEND, OR 97703

**ATTORNEY FOR
APPLICANT:** Adam Smith, Schwabe Williamson & Wyatt

REQUEST: Review of a Conditional Use Permit to establish a secondary accessory farm dwelling in an existing manufactured home in the Multiple Use Agricultural (MUA10) Zone and Airport Safety (AS) Combining Zone.

STAFF CONTACT: Haleigh King, Associate Planner
Phone: 541-383-6710
Email: Haleigh.King@deschutes.org

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/247-23-000162-CU>

Record items can also be viewed and downloaded from:
www.buildingpermits.oregon.gov

I. APPLICABLE CRITERIA

Deschutes County Code (DCC)
Title 18, Deschutes County Zoning Ordinance
Chapter 18.32, Multiple Use Agricultural Zone (MUA10)

Chapter 18.56, Surface Mining Impact Area Combining Zone (SMIA)
Chapter 18.80, Airport Safety Combining Zone (AS)
Chapter 18.116, Supplementary Provisions
Chapter 18.128, Conditional Use
Title 22, Deschutes County Development Procedures Ordinance

I. SUMMARY OF DECISION

In this decision, the County Board of Commissioners (“Board”) considers the June 14, 2023, Hearings Officer’s Decision in land use file no. 247-23-000162-CU (“Hearings Officer’s Decision”). The Board exercised its discretion under Deschutes County Code (“DCC”) 22.28.050 to initiate review of the Hearings Body’s decision. The Board received one Agenda Request & Staff Memo (“Staff Memo”) on the review of the Hearings Officer’s Decision from Associate Planner Haleigh King. The Staff Memo summarized the singular issue on appeal which was the interpretation of Deschutes County Code Section 18.116.070, the rationale relied upon by the Hearings Officer in their decision, and staff’s comments. The Board’s Decision will refer to and incorporate the Hearings Officer’s Decision, unless otherwise noted.

On August 9, 2023, following a public hearing and deliberation, the Board voted 3-0 finding the applicant’s proposal meets the criteria for a secondary accessory farm dwelling in the MUA10 Zone, and moved to reverse the Hearings Officer’s Decision denying the Conditional Use Permit application on the subject property.

II. BASIC FINDINGS OF FACT:

Except to the extent inconsistent with this decision, the Board adopts and incorporates by reference the code interpretations, findings of fact, and conclusions of law in the Hearings Officer’s Decision as set forth in Section I, Applicable Criteria; Section II, Background Findings; and Section III, Findings & Conclusions. However, the Board declines to adopt from the Hearing Officer’s Decision those findings and interpretation set forth in Section III(C)(1) – Staff Issue: Class A Manufactured Homes (pages 10-13); Section III(D) addressing DCC 18.32.030(G) (pages 20-23); Section III(D) addressing DCC 18.116.070(A)(1) (pages 32-33), and Section III(D) addressing DCC 18.116.070(B) (pages 33-34). The Board’s findings below are intended to replace the Hearings Officer’s aforementioned findings. The Hearings Officer’s Decision is attached as Exhibit A to the Board’s Decision.

A. Procedural History: On July 12, 2023, the Board voted 3-0 to initiate review of the Hearing Officer’s Decision pursuant to DCC 22.23.050. On the same day, the Board signed Order No. 2023-029 to initiate review of the Hearings Officer’s Decision. On July 26, 2023, a Notice of Public Hearing was mailed to all parties. On August 9, 2023, the Board conducted a public hearing with testimony provided by the property owner’s representative Adam Smith. The Board subsequently closed the oral and

written record and proceeded to deliberate. On August 9, 2023, the Board deliberated and voted 3-0 to reverse the Hearings Officer's Decision, as detailed below, and approve the Conditional Use Permit application.

- B. Review Period:** 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's 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 applicant initiated another toll on August 9, 2023 until September 15, 2023, which extended the clock by an additional 37 days.

The 150th day on which the County must take final action on this application is November 20, 2023.

III. FINDINGS

A. Class A Manufactured Homes

The Hearings Officer's Decision included findings addressing an issue raised by staff questioning if "a Class A manufactured home [can] be utilized as a secondary accessory farm dwelling pursuant to DCC 18.116.070." For the reasons explained below, the Board disagrees with the Hearings Officer's analysis and code interpretations and finds that a Class A manufactured home can be utilized as a secondary accessory farm dwelling pursuant to DCC 18.116.070.

Applicant's proposal is for a Conditional Use Permit to allow an existing "Class A manufactured home" to be allowed as a secondary accessory farm dwelling on the Subject Property pursuant to DCC 18.32.030(G). Secondary accessory farm dwellings are only allowed pursuant to DCC 18.32.030(G) "subject to the requirements set forth in DCC 18.116.070." DCC 18.116.070, in turn, sets forth "placement standards" dictating which classes of manufactured homes are permitted in different zones and under different circumstances. The different manufactured home classes – i.e. Class A, B, C, and D – are defined by the preceding provisions, DCC 18.116.050. Accordingly, the Board begins its analysis by interpreting DCC 18.116.050.

DCC 18.116.050 establishes four "classes" of manufactured home. The Board notes that each class generally builds upon the requirements from the lower class. Stated differently, a Class C manufactured home must meet all of the criteria applicable to a Class D manufactured home, but then also meet several additional criteria distinguishing such a manufactured home as Class C. Similarly, a Class B manufactured home must meet all the criteria applicable to Class C and Class D manufactured homes. A Class A manufactured home must meet all the criteria applicable to Class B, C, and D manufactured homes.

Following from the aforementioned observation, the Board interprets DCC 18.116.050 to mean that “Class D manufactured home” is an inclusive term including “Class C manufactured home,” “Class B manufactured home,” and “Class A manufactured home.” The same is true for a “Class C manufactured home” being an inclusive term including “Class B” and “Class A manufactured home,” and “Class B manufactured home” being an inclusive term including “Class A manufactured home.” Simply stated, a Class A manufactured home, for example, meets the requirements and is also appropriately classified as a Class B, C, or D manufactured home. Accordingly, any DCC criteria allowing a Class D manufactured home, for example, also then allows a Class C, B, or A manufactured home as well. Of course, the opposite is not true. Any DCC criteria allowing a Class A manufactured home specifically excludes Class B, C, or D manufactured homes.

As relevant in this case, DCC 18.116.070 states the following:

“A. As defined in DCC 18.116.050, Class A and B manufactured homes shall be permitted as follows, subject to the requirements of the underlying zone:

1. In the following zones, except where there is a Conventional Housing Overlay Zone (CH): Any EFU zone, MUA-10, F-1, F-2, RR-10, any area zoned as an unincorporated community (as that term is defined herein), RSR-M, RSR-5, and FP as the primary dwelling, and R-I and SM as a caretaker's residence.

* * *

B. Class C manufactured homes shall be permitted as follows:

* * *

2. As a secondary accessory farm dwelling.”

The Hearings Officer’s Decision interpreted DCC 18.116.050(A)(1) set forth above without reference to or accounting for either DCC 18.116.070(B)(2), also set forth above, or DCC 18.116.050 discussed above. Of particular relevance to this subject application, the Hearings Officer specifically held that the phrase “as the primary dwelling” modifies and applies to all of the preceding enumerated zones. As further explained by the Hearings Officer, DCC 18.116.070(A)(1) establishes “two lists of zones” where Class A and Class B manufactured homes can be placed, with the first “list” allowing Class A and B manufactured homes only as a “primary dwelling” in the County’s EFU, MUA-10, F-1, F-2, RR-10, RSR-M, RSR-5, and FP zone, and any other area zoned as an unincorporated community. The second “list,” according to the Hearings Officer, only allows Class A and B manufactured homes as a “caretaker’s residence” in the R-I and SM zones.

The Board specifically disagrees with the Hearings Officer's interpretation of DCC 18.116.070(A)(1) because that interpretation then introduces a direct conflict with DCC 18.116.070(B)(2). On its face, DCC 18.116.070(B)(2) allows a Class C manufactured home - which by definition include Class A and B manufactured homes - to be used as a secondary accessory farm dwelling, which is a use allowed in the County's MUA-10 zone. The Hearing Officer's interpretation of DCC 18.116.070(B)(1) only allows Class A and B manufactured homes in the MUA-10 zone if used as "the primary dwelling."

The Board agrees with the Hearings Officer that ORS 174.010 is directly relevant to this case. That statute states the following (emphasis added):

"In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all."

To "give effect to all" applicable DCC provisions - i.e. DCC 18.116.050, DCC 18.116.070(A)(1), and DCC 18.116.070(B)(2) - the Board interprets the "as the primary dwelling phrase" in DCC 18.116.070(A)(1) to only apply to the immediately preceding enumerated FP zone and not to the entire lists of zones preceding that phrase. Following the Hearings Officer's explanation, DCC 18.116.070(A)(1) then sets forth "three" rather than "two lists." The first list then includes those zones where Class A and B manufactured homes may be used regardless of the type of housing: EFU, MUA-10, F-1, F-2, RR-10, RSR-M, RSR-5, and any other area zoned as an unincorporated community. The second list then includes those zones where Class A and B manufactured homes may be used only as a primary dwelling: FP. And the third list then includes those zones where Class A and B manufactured homes may be used only as a caretaker's residence: R-I and SM zones. The Board finds that this interpretation of DCC 18.116.070(A)(1) is plausible because it specifically accounts for DCC 18.116.070(B)(2) which directly allows Class C manufactured homes - which include Class A and B manufactured homes - as secondary accessory farm dwellings in the County's MUA-10 zone, for example.

Returning to the issue, the Board reiterates that a Class A, B, and C manufactured home can all be utilized as secondary accessory farm dwellings pursuant to DCC 18.116.070.

B. DCC 18.32.030(G)

DCC 18.32.030(G) allows a "manufactured home as a secondary accessory farm dwelling" in the County's MUA-10 zone "subject to the requirements set forth in DCC 18.116.070." As noted above, DCC 18.116.070(B)(2) directly allows a Class C

manufactured home to be use as a “secondary accessory farm dwelling.” Consistent with DCC 18.116.050 as interpreted by the Board, Class C manufactured homes also include those manufactured homes meeting the criteria distinguishing Class A or B manufactured homes. Further, DCC 18.116.070(A)(1) also allows Class A and B manufactured homes to be used for any type of housing in the County’s MUA-10 zone.

In this case, Applicant proposes to establish a secondary accessory farm dwelling on the Subject Property using an existing Class A manufactured home. The Board finds that Applicant’s Class A manufactured home also qualifies as a Class C manufactured home pursuant to DCC 18.116.050, and therefore is specifically allowed to be used as a secondary accessory farm dwelling pursuant to DCC 18.116.070(B)(2). The Board also finds that the Applicant’s Class A manufactured home is specifically allowed to be used for housing in the MUA-10 zone pursuant to DCC 18.116.070(A)(1). Accordingly, DCC 18.32.030(G) is satisfied in this case.

C. DCC 18.116.070(A)(1)

Consistent with the Board’s findings regarding DCC 18.32.030(G), the Board finds that DCC 18.116.070(A)(1) is satisfied in this case because that provision allows Class A and B manufactured homes to be used for any type of housing in the MUA-10 zone. In this case, Applicant proposes to use an existing Class A manufactured home as a secondary accessory farm dwelling in the County’s MUA-10 zone.

D. DCC 18.116.070(B)

Consistent with the Board’s findings regarding DCC 18.32.030(G), the Board finds that DCC 18.116.070(B)(2) is directly relevant to this case. That provision allows Class C manufactured homes – which include those manufactured homes meeting the criteria distinguishing Class A and B manufactured homes pursuant to DCC 18.116.050 – to be used as secondary accessory farm dwellings. In this case, the Applicant’s existing Class A manufactured home meets the criteria to also be classified as a Class C manufactured home, and therefore may be used as a secondary accessory farm dwelling pursuant to DCC 18.116.070(B)(2). This criterion is satisfied.

IV. DECISION:

Based upon the foregoing Findings, the Board of County Commissioners hereby **APPROVES** the Applicant’s application for a Conditional Use Permit to establish a secondary accessory farm dwelling under land use file no. 247-23-000162-CU and is subject to the following conditions of approval, except as modified by this decision:

- A.** This approval is based upon the application, site plan, specifications, and supporting documentation submitted by the applicant. Any

substantial change in this approved use will require review through a new land use application.

- B. Prior to the initiation of use**, the property owner shall obtain any necessary permits from the Deschutes County Building Division and Onsite Wastewater Division.
- C. Building Height**: No building or structure shall be erected or enlarged to exceed 30 feet in height, except as allowed by DCC 18.120.040.
- D. General Setbacks**: All buildings or structures shall meet the setback standards as outlined in DCC 18.16.070 (A – C).
- E. Building and Structural Code Setbacks**: All buildings or structures shall comply with any greater setbacks required by applicable building or structural codes adopted by the State of Oregon and/or the County under DCC 15.04 shall be met.
- F. Outdoor Lighting**: No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.
- G. Glare**: No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot's vision.

Dated this ___ day of _____ 2023

BOARD OF COUNTY COMMISSIONERS
FOR DESCHUTES COUNTY

Anthony DeBone, Chair

Patti Adair, Vice Chair

Phil Chang, Commissioner

THIS DECISION BECOMES FINAL WHEN MAILED. PARTIES MAY APPEAL THIS DECISION TO THE LAND USE BOARD OF APPEALS WITHIN 21 DAYS OF THE DATE ON WHICH THIS DECISION IS FINAL.

EXHIBIT

- A.** Hearings Officer's Decision dated June 14, 2023