



**MEMORANDUM**

**TO:** Board of County Commissioners

**FROM:** Angie Brewer, Senior Planner

**DATE:** January 5, 2022 for January 12, 2022 Board Session

**RE:** Board Order 2022-003  
Decision whether to hear an appeal of Hearings Officer's approval of an application to amend Conceptual Master Plan/Final Master Plan (CMP/FMP) for Thornburgh Destination Resort to conform to State and County Destination Resort rules regarding Overnight Lodging Units to State and County Destination Resort rules.  
File No. 247-21-001116-A

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On January 12, 2022, the Board of County Commissioners (Board) will consider whether to hear Appeal No. 247-21-001116-A of Hearings Officer decision 247-21-000920-A (appeal of Staff Decision 247-21-000553-MC). The Hearings Officer decision addresses a limited scope of issues on appeal and approves the request.

**I. BACKGROUND**

The Thornburgh Destination Resort Master Plan/Conceptual Master Plan was previously approved in File No. M-07/MA-08-6. The applicant has subsequently pursued required land use approvals for specific Site Plan reviews and Tentative Plan reviews to implement the Master Plan in phases.

The subject appeal is in response to amend the previously approved Conceptual Master Plan/Final Master Plan (CMP/FMP) for Thornburgh Destination Resort to conform to State and County Destination Resort rules regarding Overnight Lodging Units to State and County Destination Resort rules. Changes to law include changes to the ratio of overnight lodging units to single-family dwellings and the number of weeks each year an OLU must be available for overnight lodging.

Staff received Application 247-21-000553-MC on June 3, 2021; Staff issued an administrative decision on September 30, 2021, approving the proposed development with conditions. Appeal 920-A, filed by Annunziata Gould was received October 12, 2021. A hearing before the Deschutes County Hearings Officer Gregory Frank was held November 4, 2021. The Hearings Officer Decision was

issued December 21, 2021, responding to the grounds for appeal, modifying the staff report, and approving the proposed amendment. An appeal of the Hearings Officer decision was received December 30, 2021 by Annunziata Gould. The 150<sup>th</sup> day by which a final local decision must be issued is February 12, 2022. Staff notes Board hearings for land use appeals require 20-day public notice and have a 12-day appeal period.

## II. HEARINGS OFFICER DECISION

A public hearing was held November 4, 2021; additional argument and evidence was provided during the open record period.

The Hearings Officer remand decision concludes the following:

1. *Appellant's appeal of the Staff Decision is denied.*
2. *The Staff Findings and Decision (247-21-000553-MC) is affirmed excepting Conditions D, E, and F which are modified to read as follows:*

- A. *Staff Decision Condition D - 21a is revised to read as follows (sections in italics represent newly revised language):*

*The resort shall comply with DCC 18.113.060(D)(2). Specifically, DCC 18.113.060(D)(2) requires:*

*Individually owned residential units that do not meet the definition of overnight lodging in DCC 18.04.030 shall not exceed two and one-half such units for each unit of visitor oriented overnight lodging. Individually owned units shall be considered visitor oriented overnight lodging if they are available for overnight rental use by the general public for 23 at least 38 weeks per calendar year through one or more central reservation and check in service(s) operated by the destination resort or by a real estate property manager, as defined in ORS 696.010.*

- B. *Staff Decision Condition D - 21b is deleted.*
- C. *Staff Decision Condition D - 21c is retained.*
- D. *Staff Decision Condition D - 21d is deleted.*
- E. *Staff Decision Condition E is deleted.*
- F. *Condition 33 is retained and revised to read as follows (sections in italics represent newly revised language):*

*The Resort shall, in the first phase, provide for the following:*

- A. *At least 150 separate rentable units for visitor-oriented lodging as follows:*

- (a) *The first 50 overnight lodging units must be constructed prior to the closure of sales, rental or lease of any residential dwellings or lots.*

- (b) *The resort may elect to phase in the remaining 100 overnight lodging units as follows:*
- (i) *At least 50 of the remaining 100 required overnight lodging units shall be constructed or guaranteed through surety bonding or equivalent financial assurance within five years of the closure of sale of individual lots or units, and*
  - (ii) *The remaining 50 required overnight lodging units shall be constructed or guaranteed through surety bonding or equivalent financial assurances within 10 years of the closure of sale of individual lots or units.*
  - (iii) *If the developer of a resort guarantees a portion of the required overnight lodging units required under subsection 18.113.060(A) (1)(b) through surety bonding or other equivalent financial assurance, the overnight lodging units must be constructed within 4 years of the date of execution of the surety bond or other equivalent financial assurance.*
  - (iv) *The 2.5:1 accommodation ratio required by DCC 18.113.060 (D)(2) must be maintained at all times.*
- (c) *If a resort does not choose to phase the overnight lodging units as described in this condition of approval, then the required 150 units of overnight lodging units must be constructed prior to the closure of sales, rental or lease of any residential dwellings or lots.*
- B. *Visitor-oriented eating establishments for at least 100 persons and meeting room which provide eating for at least 100 persons.*
- C. *The aggregate cost of developing the overnight lodging facilities and the eating establishments and meeting rooms required in DCC 18.113.060(A)(1) and (2) shall be at least \$2,000,000 (in 1984 dollars).*
- D. *At least \$2,000,000 (in 1984 dollars) shall be spent on developed recreational facilities.*
- E. *The facilities and accommodations required by DCC 18.113.060, other than overnight lodging units, must be physically provided or financially assured pursuant to DCC 18.113.110 prior to the closure of sales, rental or lease of any residential dwellings or lots.*
- G. *Staff Decision Condition F is deleted and Condition 35 is retained and revised to read as follows (sections in italics represent newly revised language):*

*The contract with the owners of units that will be used for overnight lodging by the general public shall contain language to the following effect: “[Unit Owner] shall make the unit available to [Thornburgh Resort/booking agent] for overnight rental use by the general public at least 38 weeks per calendar year through a central reservation and check-in service.*

### III. APPEAL

The appellant, Annunziata Gould provided a statement of reasons for the appeal, summarized here:

1. Goal Post Rule;
2. Raise or Waive It;
3. Lot of Record Issue;
4. Substantial Change (Final Master Plan Condition 1);
5. Judge Lipscomb's Arguments;
6. Conditions of Approval;
7. Conclusions and Decision.

The appellant requests the Board hear this matter to review and reverse the Hearings Officer remand decision. The appellant requests a de novo hearing before the Board.

### IV. BOARD OPTIONS

There are two versions of Order No. 2022-003 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 staff<sup>1</sup>

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

#### 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.
- Statutory remand timelines require a final local decision by February 12, 2022; insufficient time exists for the Board to hear, deliberate, and decide upon the matter.
- The applicant agrees with the Hearings Officer's decision and thus requests that the Board not hear the appeal.

#### Reasons to hear:

- The Board may want to take testimony and make interpretations relating to the Hearings Officer's decision.

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<sup>1</sup> Deschutes County Code (DCC) 22.32.035(B) and (D)

- The appellant recommends the Board hear this matter.

If the Board chooses to hear this matter, the appellant requests the hearing be heard de novo. The applicant has 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.

If the Board decides that the Hearings Officer’s remand 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 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. Staff also notes that there is not adequate time in the 150-day remand review clock.

**VI. 150-DAY LAND USE CLOCK**

The County must take final action on this application by February 12, 2022.

**VII. RECORD**

The record for appeal File 247-21-00116-A (247-21-000920-A and 247-21-000553-MC) is as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-21-001116-appeal-hearings-officer-decision-247-21-000920-247-21-000553-mc>

Attachments:

<b>Document</b>	<b>Item No.</b>
Order No 2022-003_Accept_1116-A	1
Order No 2022-003_Decline_1116-A	2

REVIEWED  

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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. 2022-003  
001116-A, 247-21-000920-A, and 247-21-  
000553-MC

WHEREAS on June 3, 2021, Central Land and Cattle Co., LLC initiated 247-21-000553-MC with a new land use application; and

WHEREAS, on September 30, 2021, an administrative decision was issued by Deschutes County Community Development Department approving the proposed development with conditions; and

WHEREAS, on October 12, 2021, appeal 247-21-000920-A was submitted by Annunziata Gould, represented by Jeffrey Kleinman; and

WHEREAS, on November 4, 2021, a public hearing was held at 6:00pm in the Barnes and Sawyer Meeting Room and by Zoom for the Deschutes County Hearings Officer review of 247-21-000553-MC and 247-21-000920-A; and

WHEREAS, on December 21, 2021, the Deschutes County Hearings Officer approved Application No. 247-21-000553-MC; and

WHEREAS, on December 30, 2021, Annunziata Gould, the Appellant, appealed (File No. 247-21-001116-A) the Deschutes County Hearings Officer’s Decision on Files 247-21-000920-A and 247-21-000553-MC; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code (“DCC”) allow 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 hear on appeal application 247-21-001116-A, 247-21-000920-A, 247-21-000553-MC pursuant to Title 22 of the DCC 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. Pursuant to DCC 22.32.035(D), the only documents placed before and considered by the Board are the notice of appeal, recommendations of staff, and the record developed before the lower hearing body for file nos. 247-21-001116-A, 920-A, 553-MC as presented at the following website:

<https://www.deschutes.org/cd/page/247-21-001116-appeal-hearings-officer-decision-247-21-000920-247-21-000553-mc>

Going forward, all documents further placed before, and not rejected by, the Board shall be added to the aforementioned website, and that website shall be the Board's official repository for the record in this matter.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2022.

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
ANTHONY DeBONE, Chair

\_\_\_\_\_  
PHIL CHANG, Vice Chair

ATTEST:

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
PATTI ADAIR, Commissioner

REVIEWED

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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-  
001116-A, 247-21-920-A, and 247-21-  
000553-MC.

\*  
\*

ORDER NO. 2022-003

WHEREAS on June 3, 2021, Central Land and Cattle Co., LLC initiated 247-21-000553-MC with a new land use application; and

WHEREAS, on September 30, 2021, an administrative decision was issued by Deschutes County Community Development Department approving the proposed development with conditions; and

WHEREAS, on October 12, 2021, appeal 247-21-000920-A was submitted by Annunziata Gould, represented by Jeffrey Kleinman; and

WHEREAS, on November 4, 2021, a public hearing was held at 6:00pm in the Barnes and Sawyer Meeting Room and by Zoom for the Deschutes County Hearings Officer review of 247-21-000553-MC and 247-21-000920-A; and

WHEREAS, on December 21, 2021, the Deschutes County Hearings Officer approved Application No. 247-21-000553-MC; and

WHEREAS, on December 30, 2021, Annunziata Gould, the Appellant, appealed the Deschutes County Hearings Officer’s Decision on Files 247-21-000920-A and 247-21-000553-MC (Appeal File No. 247-21-001116-A) the; and

WHEREAS, Sections 22.32.027 and 22.32.035 of the Deschutes County Code (“DCC”) allow 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 247-21-001116-A, 920-A, 553-MC pursuant to Title 22 of the DCC 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 3. Pursuant to DCC 22.32.035(D), the only documents placed before and considered by the Board are the notice of appeal, recommendations of staff, and the record developed before the lower hearing body for file nos. 247-21-001116-A, 920-A, 553-MC as presented at the following website:

<https://www.deschutes.org/cd/page/247-21-001116-appeal-hearings-officer-decision-247-21-000920-247-21-000553-mc>

DATED this \_\_\_\_ day of \_\_\_\_\_, 2022.

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
ANTHONY DeBONE, Chair

\_\_\_\_\_  
PHIL CHANG, Vice Chair

ATTEST:

\_\_\_\_\_  
Recording Secretary

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PATTI ADAIR, Commissioner