



MEMORANDUM

TO: Board of County Commissioners

FROM: Angie Brewer, Senior Planner

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

RE: Board Order 2022-002
Decision whether to hear an appeal of Hearings Officer's approval of an application for 80 Overnight Lodging Units at the Thornburgh Destination Resort
File No. 247-21-001115-A

On January 12, 2022, the Board of County Commissioners (Board) will consider whether to hear appeal 247-21-001115-A of Hearings Officer decision 247-21-000849-A (appeal of Staff Decision 247-21-000508-SP). The Hearings Officer decision addresses a limited scope of issues on appeal and approves the request for 80 Overnight Lodging Units (OLU's).

I. BACKGROUND

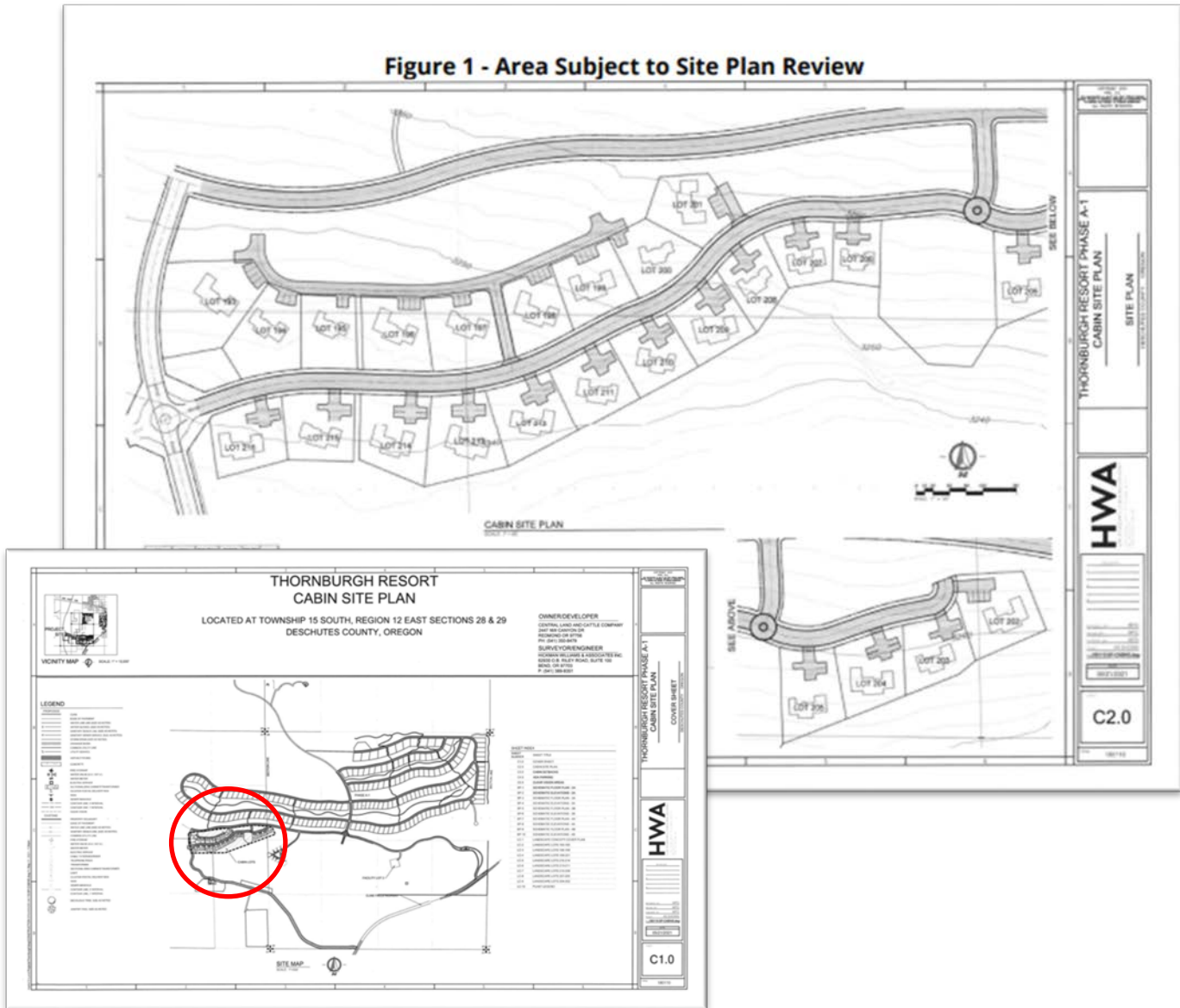
The Thornburgh Destination Resort Master Plan/Conceptual Master Plan was previously approved in File No. M-07/MA-08-6. The applicant has subsequently pursued required land use approvals for specific Site Plan reviews and Tentative Plan reviews to implement the Master Plan in phases.

The subject appeal is in response to Site Plan Review for the construction of 80 Overnight Lodging Units in Phase A-1 of the Thornburgh Destination Resort. OLU's are a required component of destination resort development. Phase A-1 subdivision was previously approved by Deschutes County but has subsequently been appealed to the Oregon Land Use Board of Appeals and has not yet been decided (247-21-000937-A, 21-000731-A; and 247-18-386-TP, 18-454-SP, 18-542-MA). The Board elected not to hear this matter in Board Order 2021-0059. Court rulings have confirmed the status of this case does not preclude the applicant from pursuing subsequent phases of the permitting process.

Staff received Application 247-21-000508-SP on May 21, 2021; Staff issued an administrative decision on September 9, 2021, approving the proposed development with conditions. Appeal 247-21-000849-A was filed by Annunziata Gould September 21, 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 development. Annunziata Gould provided an appeal of the Hearings Officer decision December 30, 2021.

Figure 1 - Area Subject to Site Plan Review



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:

IV. DECISION

1. Appellant's appeal of the Staff Decision is denied; and

2. *The Staff Findings and Decision (247-21-000553-MC¹) is affirmed excepting as modified below:*
 - a. *FMP Conditions 3, 8, 9, 11, 13, 14A, 14B, 15, 24, 30 and 37 are "satisfied;" and*
 - b. *Condition 28 correctly states: See conditions # 38 and #39; and*
 - c. *Delete: Staff Decision Condition C.*

III. APPEAL

The appellant, Annunziata Gould provide a statement of reasons for the appeal, noting the following:

1. The proposed Site Plan is inextricably linked with the review of Phase A-1, the approval of which is on appeal before LUBA;
2. Lot of Record;
3. Final Master Plan Conditions 10 and 38;
4. Phase A-1 Condition 17;
5. Final Master Plan Condition 21;
6. Final Master Plan Condition 28 and relatedly, Conditions 38 and 39;
7. Final Master Plan Condition 38;
8. Water Rights;
9. DCC 18.113.060;
10. Applicant's requested "correction" #1;
11. Applicant's requested "correction" #2;
12. 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. 2022-002 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.

¹ Staff notes a scrivener's error that this decision is limited to the 508-SP file, not the 553-MC file, heard the same evening by the same Hearings Officer.

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

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, leaving very little time for the Board to sufficiently 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.
- 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 247-21-00115-A (247-21-000849-A and 247-21-000508-SP) is as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-21-001115-appeal-hearings-officer-decision-247-21-000849-247-21-000508-sp>

Attachments:

Document	Item No.
Order No 2022-002_Accept_1115-A	1
Order No 2022-002_Decline_1115-A	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. 2022-002
001115-A, 247-21-849-A, 247-21-508-SP

WHEREAS on May 21, 2021, Central Land and Cattle Co., LLC initiated 247-21-000508-SP with a new land use application; and

WHEREAS, on September 9, 2021, an administrative decision was issued by Deschutes County Community Development Department approving the proposed development with conditions; and

WHEREAS, on September 21, 2021, appeal 247-21-000849-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 247-21-000508-SP and 247-21-000849-A; and

WHEREAS, on December 21, 2021, the Deschutes County Hearings Officer approved Application No. 247-21-000508-SP; and

WHEREAS, on December 30, 2021, Annunziata Gould, the Appellant, appealed (File No. 247-21-001115-A) the Deschutes County Hearings Officer’s Decision on Files 247-21-000849-A and 247-21-000508-SP; 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 247-21-001115-A, 849-A, 508-SP 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. 247-21-001115-A, 849-A, 508-SP as presented at the following website:

<https://www.deschutes.org/cd/page/247-21-001115-appeal-hearings-officer-decision-247-21-000849-247-21-000508-sp>

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

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. 2022-002
001115-A, 247-21-000849-A, and 247-21-
000508-SP.

WHEREAS on May 21, 2021, Central Land and Cattle Co., LLC initiated 247-21-000508-SP with a new land use application; and

WHEREAS, on September 9, 2021, an administrative decision was issued by Deschutes County Community Development Department approving the proposed development with conditions; and

WHEREAS, on September 21, 2021, appeal 247-21-000849-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 247-21-000508-SP and 247-21-000849-A; and

WHEREAS, on December 21, 2021, the Deschutes County Hearings Officer approved Application No. 247-21-000508-SP; and

WHEREAS, on December 30, 2021, Annunziata Gould, the Appellant, appealed the Deschutes County Hearings Officer’s Decision on Files 247-21-000849-A 247-21-000508-SP (Appeal File No. 247-21-001115-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 247-21-001115-A, 849-A, 508-SP 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. 247-21-001115-A, 849-A, 508-SP as presented at the following website:

<https://www.deschutes.org/cd/page/247-21-001115-appeal-hearings-officer-decision-247-21-000849-247-21-000508-sp>

DATED this ____ day of _____, 2022.

BOARD OF COUNTY COMMISSIONERS

ANTHONY DeBONE, Chair

PHIL CHANG, Vice Chair

ATTEST:

Recording Secretary

PATTI ADAIR, Commissioner