

Friends of Linn County

Protecting and preserving our farms, forests, and communities

Robert Wheeldon
Linn County Department of Planning and Building
PO Box 100
Albany OR 97321

November 14, 2008

RE: Notice of Intent to Appeal of Planning Director decision in PD08-0181, Cox

Dear Mr. Wheeldon:

On October 13, 2008 the Linn County Department of Planning and Building approved PD08-0181, an application by Robert Cox to retain an existing accessory farm dwelling on a property identified as 11S-4W-10 tax lots 200 and 301, an EFU-zoned tract of 127.16 acres. Tax Lot 200 is 53.69 acres in size; Tax Lot 301, 73.47 acres. The subject property is located at 35500 Spicer Drive, Lebanon.

The primary dwelling was sited in 1976 on Tax Lot 200 when that parcel was under separate ownership from Tax Lot 301. The accessory farm dwelling was approved on Tax Lot 200 on October 19, 1993, apparently when tax lots 200 and 301 were still under separate ownerships.

Friends of Linn County and Mr. Just hereby appeal the county's decision.

LC 921.220 sets forth the requirements for standing to appeal.

921.221(A)(2): Who may file

A person who has standing in a land development procedure conducted pursuant to LCC 921.120 to 921.135 may file a notice of intent to appeal for a Type II or Type III decision. The notice of intent to appeal must comply with this section and LCC 921.230.

Friends of Linn County and Mr. Just submitted comments to the Planning Department regarding PD08-0203 and have standing to appeal.

LC 921.230(C) specifies the required contents of a notice of appeal.

(C) The written notice of intent to appeal must be in writing and contain at a minimum:

(1) the Department's case file number[.]

The Department's case file number is PD08-0181.

(2) the appellant's name, address and telephone number[.]

Appellants are:

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jjust@centurytel.net

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PO Box 113
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541-258-6074

Jim Just
39625 Almen Drive
Lebanon, OR 97355
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(3) *identify with particular specificity the inadequacies, omissions or errors made by the decision maker[.]*

Linn County exceeding its authority in requiring review and re-approval of an existing accessory farm dwelling.

ORS 215.283(1)(f) (1993 edition) allowed “[t]he dwellings and other buildings customarily provided in conjunction with farm use.” ORS 215.283(1)(f) currently authorizes “[p]rimary or accessory dwellings and other buildings customarily provided in conjunction with farm use.”

OAR 660-33-030(1) (1993 edition) provided that a dwelling could be considered to be “in conjunction with farm use” upon finding that the dwelling would be occupied by a person or persons who will be principally engaged in the farm use of the land. OAR 660-033-0030(24)(a) currently allows accessory farm dwellings (not restricted to manufactured dwellings) if the accessory farm dwelling would be located on the same lot or parcel as the primary dwelling and the accessory dwelling would be occupied by a person or persons who will be engaged in the farm use of the land and whose assistance is required by the farm operator.

ORS 215.130(5) provides that “[t]he lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued.”

The Oregon Supreme Court’s decision in *Brentmar v. Jackson County*, 321 Or 481, 900 P2d 1030 (1995), established that the uses allowed under ORS 215.283(1) are permitted outright, whereas the uses allowed under ORS 215.283(2) may be subject to locally adopted approval criteria. *Brentmar* at 496.

Linn County may not treat an accessory farm dwelling as a use “subject to the approval of the governing body or its designee” under ORS 215.283(2). The property owner is allowed immediate and continued use of the lawfully established dwelling as a matter of right.

The county’s decision should be vacated and any application or other fees paid to the county by the applicant should be refunded.

Should the Planning Director question whether the inadequacies, omissions or errors made by the Planning Department have been identified with sufficient “particular specificity”, the Planning Director should note that, consistent with ORS 215.416(11)(a) an appeal to an initial public hearing may not be dismissed for failure to list specific reasons in the notice of

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appeal. *Lenox v. Jackson County*, __ Or LUBA __ (LUBA No. 2008-095, 10/14/2008), slip op 5.

(4) an appeal fee. The applicant must pay to the County within the appeal period the full amount of the appeal fee specified in the notice of decision if the appeal is not of a Commission decision. An appeal is not complete without the appeal fee, and the hearing authority shall not take jurisdiction of an appeal unless the fee is timely paid in full. Appeal fees must comply with LCC 921.040.

The Notice of Decision specifies that the filing fee is \$200. A check in that amount accompanies this Notice of Intent to Appeal.

Please accept this Notice of Intent to Appeal and schedule the a hearing on appeal pursuant to LC 921.220(A)(5).

Respectfully submitted,

Jim Just
President