

Approved March 16, 2016

Public Hearing, Land Use Board of Appeals (LUBA) Remand 2015-044/ Goering

BE IT REMEMBERED THAT the Crook County Court held a public hearing on Wednesday, January 20, 2016 at 2:00 p.m. in the County meeting room located at 320 NE Court Street, Prineville, Oregon to address the LUBA Remand, 2015-044, of the decision of the Crook County Court regarding the Goering property, a 640-acre parcel located in the southwestern portion of Crook County, north of Alfalfa Market Road and west of Millican Road (T17S R15E WM, Section 16, Tax lots 200, 201,202,300 and 301). The hearing is being held pursuant to Crook County Code Title 18, Section 18.172.130. The hearing before the County Court is limited to County staff, the applicants, the appellants and persons who testified at any stage of the local proceedings or at a prior LUBA appeal of this case. The remand hearing is limited solely to issues remanded in the final decision of the Land Use Board of Appeals dated November 5, 2015.

This complete hearing is available on CD.

In attendance were: County Judge Mike McCabe; County Commissioner Ken Fahlgren; County Commissioner Seth Crawford; County Counsel Jeff Wilson; Assistant County Counsel Eric Blaine and County Court Secretary Colleen Ferguson.

Members of the public signing the attendance log were: Wendie Kellington, PO Box 159, Lake Oswego, OR 97034; Linda and Randy Goering, on file; Greg Jackle, on file; Carol MacBeth, on file, and Jim Wood, Post, Oregon.

County Counsel Jeff Wilson presented a review of the Goering case. This case is now pending 12 years since August 2004 by Mr. and Mrs. Goering on their 640-acre property zoned EFU 1-non-resource. They are working to change zoning from EFU1 to Rural Aviation Community (RAC). This has been appealed to LUBA three times and remanded to the Court in 2005, 2007 and 2015. Today, the Court is acting on the 2015 LUBA decision and remand.

Mr. Wilson provided the review of the Court's last actions and LUBA's reasoning for remand. At the last remand hearing held in 2015, the Court had made findings and decisions that : #1, Approved the ESEE analysis; #2, Applied the RAC Zone to the property and #3, Approved amendments to Goal 5. LUBA agreed with all except #3. Mr. Wilson said that in hind sight, #3 was probably not needed. He provided the option before the Court to remove the amendments.

Mr. Wilson read the appeal language and said the burden is on the applicant. There will be 20 minutes to supplement and provide proof.

The Court was polled for ex parte communications or conflicts of interest. Commissioner Fahlgren, Commissioner Crawford and Judge McCabe all stated they had no ex parte communication and no conflicts of interest.

Applicant Testimony

Wendie Kellington, attorney for applicants Linda and Randy Goering, provided a power point presentation, and the copy of the notice sent December 17, 2015, and date stamped received December 21, 2015. She stated that the hope is to repeal the amendments to Goal 5. She suggests applying the amended RAC zone to the Goering property removing the Goal 5 Big Game Wildlife Overlays per LUBA. It should be properly removed. The Goering's property is unique.

Ms. Kellington stated that on April 7, 2015, the decision on standing was that the Central Oregon LandWatch lacked standing. The decision was final and not appealed to LUBA. Central Oregon LandWatch is here today represented by Carol Macbeth, and is seeking standing. She asked that the 2015 amendments be removed and have staff come back with the documents for approval.

Mr. Wilson said he completely agreed with Ms. Kellington's presentation.

Bill Zelenka, County Planning Director said it is a simple text amendment to remove the language and restore to the original.

Appellant Testimony

Greg Jackel, District Biologist for Oregon Department of Fish and Wildlife (ODF&W), said he did attend the April 15, 2015 meeting but did not present argument. He sat back and said nothing. He has nothing new since the 2015 hearing.

He discussed Ordinance 259 and wildlife values, and said he worked well with both Bill Zelenka and Ann Beier of the County Planning Department. He said his job is to advocate for wildlife. There will be a donut hole in the future of the wildlife habitat. He hopes to work together. Most have a high level of concerns for wildlife.

Carol MacBeth, staff attorney for Central Oregon LandWatch (COLW), asked to talk about standings. She said that COLW was invited and received a notice. She said COLW was invited to speak.

Mr. Wilson said he does not believe that Central Oregon LandWatch has standing. COLW was mailed the notice because they signed in at the hearing. That does not in itself create standing. Mr. Wilson advised the Court that they not acknowledge or accept the COLW standing.

Jim Wood, Post, 97752, had the envelope of the notice of December 17, 2015. He said he had a brief letter and few notes as testimony for the Court. Mr. Wood asked if there was a staff report on today's hearing. Mr. Wilson said, no, there is no staff report.

Mr. Wood said he worked with Robert Erickson, an attorney out of Banks, Oregon. Mr. Erickson is a pilot and said he would like to apply for a RAC zone for property that is part of Riverside Ranch. Mr. Wood said the Goering decision would set a precedent.

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Mr. Wood read his testimony letter into the record, and said he would like to adopt the comments provided by Carol MacBeth of Central Oregon LandWatch, into his testimony.

He provided Exhibit C to the Court Secretary. Exhibit C was Mr. Wood's letter along with all of the comments and information provided by Carol MacBeth representing COLC.

There was a discussion as to whether Ms. MacBeth's documents would be accepted. Mr. Wilson's recommendation is that COLW has no standing and no documents on COLW stationery submitted on their behalf will have standing on the record.

Discussion

Ms. Kellington read LUBA's decision again, affirming LUBAs April 15, 2015 decision.

Mr. Wilson asked if the Court wanted to leave the record open. He discussed Mr. Wood's testimony and the other person wanting to try and get in the RAC zone. Mr. Wilson said there is very little to worry about setting a precedent.

Mr. Wilson recommended that Central Oregon LandWatch does not have standing and cannot submit through a straw person, Mr. Wood.

Ms. Kellington objected to Mr. Wood's submittal, and Goal 5 reference. The Goal 5 issue has been settled. Goal 5 information is irrelevant. LUBA cut off the Goal 5 discussion.

Judge McCabe asked if there was COLW stationery included in Mr. Wood's submittal. Ms. Kellington said yes there is, and Mr. Wood adopted it, but the easier way is to reject this is on the Goal 5 issue. Judge McCabe said that he didn't appreciate the documents being attached to Mr. Wood's submittal, and because of that he wanted COLW and Mr. Wood to know that next time they wanted to submit any documents, they better have them to all the Court before the afternoon of the hearing. He asked Ms. Macbeth if she understood. She said she understood, and said that she had not received notice on the hearing until yesterday morning. Judge McCabe asked if these had been accepted these into the record. Mr. Wilson said no, and he again made the recommendation to the Court that a finding be made that Central Oregon LandWatch has no standing and will not be part of the record.

Ms. Kellington said the property is properly removed from the County's Goal 5 overlay. Ms. Kellington said the Goering's can successfully move in because the Goering's have successfully had the Goal 5 overlay removed. She asked the Court to reject any evidence that property should be removed from the Goal 5 because that has been settled. LUBA said go back to the unamended RAC zone prior to April 15, 2015.

Mr. Wilson recommended closing the public hearing. Judge McCabe closed the public hearing.

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Mr. Wilson provided options to the Court for a decision. The first option would be to do as LUBA suggested and remove the amendment to the RAC Zone. Direct staff today to amend the RAC zone to remove the 2015 amendments. That should satisfy the requirement of the latest remand. The other option is to take the case under advisement to review Mr. Wood's submittals more thoroughly and come back on February 3, 2016 and make a final decision. Either option is appropriate.

Motion

Commission Fahlgren moved to direct staff to remove the Goering Property from the County's Goal 5 Big Game Inventory and Mapping, and direct staff to apply the RAC Zone to the Goering property, and to repeal the amendments ODF&W challenged based on LUBA's decision that to remove those 2000 amendments from the RAC Zone was an option for the County Court to show compliance, and to include in the decision the finding that COLW lacks standing and any information written or verbal submitted on behalf of the COLW is both irrelevant given the County Court's decision on Goal 5, and because it lacks standing. Commissioner Crawford seconded the motion. The vote was 3-0, motion carried.

Judge McCabe thanked Wheeler County Judge Perry for attending the Crook County Court meeting today.

There being no further business before the Court, Judge McCabe adjourned the meeting.

Respectfully submitted,

Colleen Ferguson

Crook County Court Secretary