

BE IT REMEMBERED THAT the Crook County Court held a Public Hearing on April 7, 2015 at 10:00 a.m. in the County meeting room located at 320 NE Court Street. 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: Craig Kilpatrick, Redmond; Linda and Randy Goering; Lawrence Weberg, Prineville; Greg Jackle; Amy Stuart; Jim Wood, Post; Larry York, Prineville; Mark Rubbert, Redmond; Carol Macbeth, Bend; Wendie Kellington, Lake Oswego and Michael Warren II, Prineville.

The media receive notice of the hearing.

Purpose of Public Hearing

The Land Use Board of Appeals (LUBA) heard this matter on appeal (55 Or LUBA 165 (2007) with two alleged “assignments of error.” LUBA has remanded the case back to Crook County Court after concluding that because the EFU1 zoning is part of the County’s adopted Goal 5 program to protect inventoried deer winter range, the County must justify its decision to remove the subject property from that program under OAR 660-023-00040 and 660-023-0050. The property is identified as a 640-acre parcel located in the Southwestern portion of Crook County, North of Alfalfa Market Road and West of Millican Road (T17 S R15E WM Sec. 16 TL 200, 201, 202, 200 and 201). The hearing before the County Court shall be limited to County staff, the applicant, the appellants from the prior LUBA appeal, and any person or entity with “standing.” The remand hearing, including any new evidence and testimony shall be limited solely to issues remanded in the final decision of the Land Use Board of Appeals. To have standing, persons or parties must have participated, either orally or in writing, in the local review process.

Judge McCabe opened the meeting and Public Hearing. Michael Warren II led the Pledge of Allegiance.

Judge McCabe read the purpose of the Public Hearing into the record. Judge McCabe asked for declaration of exparte communication and/or conflict of interest by any member of the Court. There was no exparte communication and no conflict of interest declared by any Court member.

Judge McCabe opened the Public Hearing and asked County Counsel Jeff Wilson to provide the staff report.

County Counsel Jeff Wilson asked for any challenges of the Court members. There were no challenges. Mr. Wilson provided a brief staff report, history of the property and possible findings, the ESEE analysis, the big game winter range overlay, the Goal 5 criteria, the amended RAC Zoning, removal of the Goering property from the big game winter range overlay, Ordinance 259, the use of the property for airstrip activities, lack of big game animals on the property and non-resource criteria.

Testimony was limited to 30 minutes on either side.

Applicants Testimony:

Wendie Kellington, Attorney representing the Goerings, presented a PowerPoint presentation that described the 640 acre property owned by the Goerings and the aircraft landing strip. The permit for this use was issued in 1983; there are existing hangers and the Goering residence. There is no irrigation and no water for irrigation. The property is zoned non-resource, Rural Aviation Community (RAC) and is no

longer zoned Exclusive Farm Use (EFU). The RAC zone is the only zone that accommodates an airplane landing site. Ms. Kellington pointed out that the only outstanding issue is to deal with Goal 5 due to the former EFU zoning. The proposal for both of LUBA's first two options was presented. #1 Remove the winter range wildlife overlay map from the property and #2, work with RAC zoning for non-resource property to have one dwelling per each 20 acres minimum. There could be 10 acre lots but density would be 32 dwellings for the 640 acres of property of one for 20 acres. Ms. Kellington said there is nothing of value to wildlife in the area; no irrigation or ponds, no watering, not utilized for feed, no tall trees or rim rocks and very few birds. She presented the APA (Airport Protection Act) information, the compelling reason to remove the overlays. The Conditional Use Permit was issued in 1983 for the Goering property. In summary, there is no reason to apply Wildlife Overlay Map to the Goering property.

The Conclusion: Make two amendments to the RAC Zone. Apply the RAC Zone as amended to the Goering property and remove the two wildlife overlays from the subject property.

Discussion was held on the number of planes that have been on the property and have used the strip, in excess of 200. Information was presented regarding the primary purpose for the property when originally purchased. There has been rehabilitation, refurbishing of planes, rentals, and at all times, all uses going on except for medical flights.

Judge McCabe asked how many planes flew off the strip since 1983 and the answer was close to 300. There is no record of any accident with wildlife. Other information provided was that there are no inducements in that area to create a conducive environment for wildlife; the wildlife overlay is in conflict with the operation of a rural airstrip. , Animals are a known hazard and are not encouraged in any way, and this property is barely in Crook County by one mile.

Opponent Testimony

Mr. Wilson restated that in order to comment at this hearing, a person must have standing from a previous hearing. Jim Wood, Mark Rubbert, and Thousand Friends of Oregon had standing. Carol Macbeth, in attendance today, was previously a representative of Thousand Friends of Oregon and submitted written testimony on behalf of Thousand Friends at a prior hearing on this matter. Carol Macbeth is now representing Oregon Land Watch and OLW did not appear at any prior stage of the case.

Mark Rubbert testified that he was present at the original hearing eight or nine years ago. He provided information on his own background and ownership of property and said he had not visited the Goering property. He said he has observed deer and elk frequently, the land acts as a refuge, is used for ATV's and for shelter.

Judge McCabe asked if this testimony was brought up in the previous hearings.

Mr. Rubbert talked about airport security, the 8 foot high fences, and more people around frightening predators away. He is not trying to shut anything down but they are trying to bring in more people and planes.

Jim Wood, Newsome Creek Rd, Post, Oregon, said a lot has happened in the last eight years. He represented himself as the original appellant to LUBA. Discussion was held on the distance between the properties. Mr. Rubbert and Mr. Wood are relatively close if going by air.

Discussion of Ordinance 259, an Ordinance amending Title 18 of the Crook County Code and Chapter IX-Natural Resources/Hazards and Development Limitations of the Crook County Comprehensive Plan,

the Winter Range Overlay map, the Deer, Elk and Antelope population , the ESEE Analysis that must consider requirements of Goal 5, energy Impacts, impacts on water supply and water availability for wildlife in the surrounding area, and the removal of the overlay map and would it change the wildlife number. He said a piece of paper will not remove wildlife. He asked how many aircraft have taken off and how many collisions. Mr. Wood asked that the record be held open.

Rebuttal

Ms. Kellington addressed Mr. Rubbert's comments regarding seeing deer and elk. She said that Mr. Wood's property is 50 miles away from the Goering property and Mr. Rubbert's is 25 to 30 miles away. Ms. Kellington said there is no forage, no water and no cover; and wildlife does not frequent the property now. She discussed the policies in Ordinance 259, the adequate existing fencing that is maintained, and nothing done to encourage animals to use the property at this time. She discussed why the deer and antelope do not cross the fences. There is nothing on which the animals depend to encourage them to cross the fence, and more or less predators makes no difference.

Ms. Kellington said the Airport Protection Act applies to the property now. The RAC Zone is the right zone and should apply consistent with the state law. Goal 5 is nothing more than a policy choice. There is no hunting on this property. There is no adverse effect because this has not been a property that provided resources for wildlife. Evidence supports the wildlife overlay should be removed. This property is not an agricultural or resource zone. The only zone that works for the property is the RAC zone.

End of Testimony

Mr. Wilson discussed the request of Mr. Woods to hold the record open. The remand was received on February 2, 2015. May 2nd is the deadline for issuing a final decision. Mr. Wilson said the Court is not required to leave the record open.

County Planning Director Bill Zelenka said the seven days for holding the record open has always been done. Then the applicant has seven days to respond. The Court must know why they want to keep it open.

Ms. Kellington said the Airline Pilot's letter in the Power Point reinforced her position and she cannot see any purpose for holding the record open. She said that if the Court does give them the seven days, then the Goerings must be given the time also.

Mr. Wilson said there is an issue. Without a waiver of the 90 days, the April 15 meeting and then the May 2, 2015 meeting would not meet the 90 day requirement. There would have to be a Special meeting held before the end of April. Further discussion was held regarding setting the dates. The date for the Special Remand meeting was set for April 24, 2015 at 10:00 a.m. in the County meeting room. Judge McCabe explained how the individual Court members would deliberate and a decision would be delivered on April 24, 2015. The record will remain open. At the Special Court meeting, there will be no testimony. The County Court will issue the decision that day.

Judge McCabe thanked everyone for attending, and adjourned the meeting.

Respectfully submitted,

Colleen Ferguson, Crook County Court Secretary