



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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MEMORANDUM

DATE: April 2, 2015

TO: Board of County Commissioners

FROM: Anthony Raguine, Senior Planner

RE: Appeals of Hearings Officer Decisions on Miller Tree Farm (247-14-000242-CU, 243-TP, 244-CU, 245-TP, 246-CU, 247-TP, 248-CU, 249-TP, 250-CU, 251-TP)

Before the Board of County Commissioners (Board) are two timely appeals. One appeal was filed by the applicant, The Tree Farm, LLC. The other appeal was filed by Rio Lobo Investments, LLC. The appeals were submitted in response to Deschutes County Hearings Officer's decisions denying the applicant's request for five, 10-lot subdivision approvals. The Tree Farm, LLC, requests a limited *de novo* review as detailed below. Rio Lobo Investments, LLC, requests a full *de novo* review.

BACKGROUND

The Tree Farm, LLC, submitted applications to establish five, 10-lot subdivisions, for a total of 50 residential lots west of Bend. For the purposes of the record, the five individual subdivisions are referred to as Tree Farms 1-5, and the collective project is referred to as "The Tree Farm."

Each of the Tree Farm properties encompasses at least 104 acres, with The Tree Farm encompassing 533.5 total acres. Each Tree Farm subdivision would include ten residential lots with one open space lot. Every residential lot would be approximately two acres in size, with each open space lot at least 81 acres in size. Primary access to The Tree Farm would be via a series of private roads connecting to Skyliners Road.

Tree Farms 1-3 are split-zoned Rural Residential (RR-10) and Urban Area Reserve (UAR-10). The residential lots in Tree Farms 1-3 would be located in the UAR-10 portion of the properties. Tree Farm 4 is also split-zoned RR-10 and UAR-10. The residential lots in Tree Farm 4 would be located in both the RR-10 and UAR-10 portions of the property. Tree Farm 5 is zoned solely RR-10.

A public hearing was conducted on November 6, 2014. The Hearings Officer's decisions were issued on March 18, 2015. In her decisions, the Hearings Officer denied the applications based on a lack of specificity regarding the applicant's wildfire and wildlife management plans. The Hearings Officer found that in order to be effective, both the wildfire and wildlife plans must include more detail such as an action plan that:

1. Identifies specific roles and responsibilities for the developer and HOA;
2. Describes how and when the developer will hand off responsibility to the HOA; and
3. Details what specific measures will be undertaken consistent with the plans.

For the above-reasons, the Hearings Officer found that the applicant's wildfire and wildlife plans were inadequate, and did not meet the approval criteria.

THE TREE FARM, LLC, APPEAL

The Tree Farm, LLC, appeals the Hearings Officer decisions to address the following issues:

1. The Tree Farm, LLC, requests an opportunity to provide a revised wildfire management plan, and demonstrate that this plan addresses the Hearings Officer's concerns and complies with applicable approval criteria.
2. The Tree Farm, LLC, requests an opportunity to provide a revised wildlife management plan, and demonstrate that this plan addresses the Hearings Officer's concerns and complies with applicable approval criteria.
3. The Tree Farm, LLC, requests an opportunity to correct an ambiguity regarding the required 100-foot setback for lots adjoining lands within the Wildlife Area Combining Zone.

The applicant requests the Board hear the appeal under a limited *de novo* review, specific to the issues identified above.

RIO LOBO INVESTMENTS, LLC, APPEAL

Rio Lobo Investments, LLC, appeals the Hearings Officer decisions to address primary access. Primary access to the residential lots in The Tree Farm would be via private roads built upon public access easements. Construction and maintenance of the private roads would be the responsibility of the developer and HOA. The public access easements would allow the public to use these roads.

Under Deschutes County Code (DCC) Section 17.36.020(B) is the following approval criterion,

Streets in subdivisions shall be dedicated to the public, unless located in a destination resort, planned community or planned or cluster development, where roads can be privately owned. Planned developments shall include public streets where necessary to accommodate present and future through traffic.

Rio Lobo argues that publicly dedicated roads are necessary to provide "to and thru" access to the Rio Lobo property to the north of The Tree Farm. The applicant argues that the public access easements are adequate to provide "to and thru" access and, therefore, publicly dedicated roads are not necessary. The Hearings Officer agreed with the applicant and did not require publicly dedicated roads.

Rio Lobo appealed the Hearings Officer's decisions and requests full *de novo* review to address the need for publicly dedicated roads to provide "to and thru" access.

DECLINING REVIEW

If the Board decides that the Hearings Officer's decisions 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 application becomes final upon the mailing of the Board's decision to decline review. In determining whether to hear an appeal, the Board may consider only:

1. The record developed before the Hearings Officer;
2. The notices of appeal; and
3. Recommendations of staff¹

STAFF RECOMMENDATION

Staff recommends the Board hear the appeals for the following reasons:

1. Although the Hearings Officer's decisions denied the applications based on a lack of specificity with regard to the wildfire and wildlife management plans, the Hearings Officer also noted that it was feasible for the applicant to provide adequate management plans.
2. The Hearings Officer found that the proposed public access easements are sufficient, and publicly dedicated roads are not necessary to accommodate present and future traffic volumes. Staff believes the unintended consequence of this decision is that the county may find it difficult to require publicly dedicated roads because public access easements are sufficient to accommodate traffic volumes. Additionally, the Subdivision Ordinance does not specifically allow public access easements.
3. The Tree Farm project generated significant public interest.

150-DAY LAND USE CLOCK

Should the Board agree to hear the appeal, the applicant has submitted a written request to restart the 150-day land use clock pursuant to DCC 22.32.027.

Attachments:

1. Hearings Officer's decisions
2. The Tree Farm, LLC, appeal
3. Rio Lobo, LLC, appeal

¹ DCC 22.32.035(B) and (D)