



Deschutes County Board of Commissioners
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AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of April 22, 2015

DATE: April 15, 2015

FROM: Will Groves CDD 541-617-4739

TITLE OF AGENDA ITEM:

Board of County Commissioners (Board) signature and approval of Board decision Doc No. 2015-253) to approve a conditional use permit to establish a private park on an EFU-zoned parcel east of Sisters for the purpose of hosting weddings, wedding receptions, special events, and recreational activities.

PUBLIC HEARING ON THIS DATE? No.

BACKGROUND AND POLICY IMPLICATIONS:

On February 3, 2015 staff issued an administrative approval of a conditional permit to establish a private park on an EFU-zoned parcel east of Sisters for the purpose of hosting weddings, wedding receptions, special events, and recreational activities.

By Order 2015-011, dated February 4, 2015, the Board initiated review of this application under DCC 22.28.050 through a de novo hearing. The Board conducted a de novo public hearing on March 2, 2015. The written record closed on March 23, 2015. Board deliberations occurred on April 8, 2015. The Board directed Staff to prepare a written decision taking into account the Board's statements at the deliberations for their decision.

FISCAL IMPLICATIONS:

None.

RECOMMENDATION & ACTION REQUESTED:

Approve and sign Decision of Board of County Commissioners on land use file numbers 247-14-000228-CU and 247-14-000229-SP.

ATTENDANCE: Will Groves and Legal Counsel

DISTRIBUTION OF DOCUMENTS:

Will Groves, CDD
Legal Counsel



For Recording Stamp Only

**DECISION OF THE BOARD OF COUNTY COMMISSIONERS
FOR DESCHUTES COUNTY**

FILE NUMBERS: 247-14-000228-CU and 247-14-000229-SP

APPLICANTS/OWNERS: John and Stephanie Shepherd
71120 Holmes Road
Sisters, OR 97759

APPLICANT'S ATTORNEY: Dave Hunnicut
Oregonians in Action
P.O. Box 230637
Tigard, OR 97281

REQUEST: A conditional use permit to establish a private park on an EFU-zoned parcel east of Sisters for the purpose of hosting weddings, wedding receptions, special events, and recreational activities.

LOCATION: The subject property is located at 71120 Holmes Road, Sisters, and is further identified as Tax Lot 103 on Deschutes County Assessor's Map 14-11.

STAFF CONTACT: Will Groves, Senior Planner

ADMINISTRATIVE APPROVAL DATE: February 3, 2015

HEARING DATE: March 2, 2015

I. SUMMARY OF DECISION:

In this decision, the Board of County Commissioners ("Board") was asked to decide on a Board initiated review of County Staff's Findings and Decision ("Administrative Approval") that approved a conditional use permit to establish a private park on an EFU-zoned parcel east of Sisters for the purpose of hosting weddings, wedding receptions, special events, and recreational activities.

This case comes to the Board through a Board initiated review of this application under DCC 22.28.050. The appeal was heard *de novo*.

In this decision, the Board upholds and adopts the Administrative Approval except as modified herein.

On the issues presented by this appeal, the Board decides as follows:

- The “least suitable” standard of DCC 18.16.040(A)(3) does not apply to this application under the plain language of the code. If this is an error, it should be fixed as part of a future text amendment.
- The allowance of weddings under the Agri-Tourism and Commercial Activity provisions of DCC 18.16 neither precludes nor was intended to preclude Private Park weddings.
- The record demonstrates that the park will not force a significant change to surrounding farm use.
- The dwelling may be used as part of the private park as proposed so long as necessary permits from the Deschutes County Environmental Soils, Environmental Health, and Building Safety Divisions are obtained prior to initiation of the use.
- The Board amends condition #2 of the Administrative Approval to

The applicant shall obtain all necessary permits from the Deschutes County Environmental Soils, Environmental Health, and Building Safety Divisions, prior to initiation of the use. Specifically, the applicant shall provide written documentation from Deschutes County Environmental Soils, Environmental Health, and Building Safety Divisions to Deschutes County Planning Division that all park structures and facilities are adequate for the proposed park use and comply with all applicable regulations, prior to initiation of the use.

- The use of the dwelling in support of the park is not a home occupation regulated under DCC 18.116.280.
- The Board affirms the Administrative Approval findings that cinder is not an all-weather surface that complies with the DCC 18.116.030(F)(4) and, prior to commencement of any private park activities, the applicant will need to provide an all-weather surface for the road from Holmes Road to the park site.
- The proposed use constitutes a private park. Nothing in the statute requires construing “private park” narrowly under *Utsey v. Coos County*.

- As part of this case, the Board need not evaluate current compliance with the 2001 Farm Management Plan (FMP) or determine if CU-00-65 requires the resident of the farm dwelling to continue to be principally engaged in farming at a commercial scale.
- The proposed park use would not preclude or significantly interfere with the farm use described in the 2001 FMP, the current farm use of the property, or the desired future farm operations described by the applicant since the park and these farm uses are spatially and/or temporally separated. As such, farm and park uses are harmonious under 18.124.060 and the site is suitable for both uses under 18.128.015.
- The private park, as conditioned, would be compatible with either the 2001 WMP or the approved modification (247-14-000401-MC).
- The Board amends condition #9 of the Administrative Approval to specify that a “weekend day” is Saturday or Sunday.
- As a condition of approval, in order to assure no conflicts with the wildlife, farm use or surrounding uses, set-up and take down of all temporary structures and facilities shall occur no earlier than one business day prior to the events or activities and no later than one business day after the events between 7:00 a.m. and 10:00 p.m.
- As a condition of approval, nothing in this decision waives compliance with or acts as a variance to the requirements of DCC 8.08, Noise Control.

II. APPLICABLE CRITERIA:

The Board adopts Staff’s findings in Section I of the Administrative Approval and incorporates them herein as its own findings, except as modified below.

Chapter 22.28.	LAND USE ACTION DECISIONS
22.28.050.	Review by Board.

III. BASIC FINDINGS:

The Board adopts the findings that were made by Staff, in Sections II (A) through (K) and adds the following information.

- I. PUBLIC COMMENTS:** In addition to the information provided in the findings in the Administrative Approval, the Board finds that the Planning Division mailed individual written notice of the March 2, 2015 Board hearing to parties to the application. In addition, notice of the public hearing before the Board was published in the “Bend Bulletin” newspaper.

K. LAND USE HISTORY: In addition to the findings in the Administrative Approval, the Board finds that, on February 3, 2015 staff issued an administrative approval of a conditional permit to establish a private park on an EFU-zoned parcel east of Sisters for the purpose of hosting weddings, wedding receptions, special events, and recreational activities.

By Order 2015-011, dated February 4, 2015, the Board initiated review of this application under DCC 22.28.050 through a de novo hearing. The Board conducted a de novo public hearing on March 2, 2015. The written record closed on March 23, 2015. Board deliberations occurred on April 8, 2015. The Board directed Staff to prepare a written decision taking into account the Board's statements at the deliberations for their decision.

IV. CONCLUSIONARY FINDINGS:

Adoption of the Administrative Approval Conclusionary Findings

FINDINGS: The Board adopts and incorporates herein by reference Section III of the Administrative Approval dated February 3, 2015, except as modified as follows.

TITLE 22 OF THE DESCHUTES COUNTY CODE, THE DEVELOPMENT PROCEDURES ORDINANCE

Chapter 22.28. LAND USE ACTION DECISIONS

Section 22.28.050. Review by Board.

- A. Review of an administrative action or a Hearings Body's decision may be initiated by the Board of County Commissioners. The Board shall consider calling up for review any administrative decision that a majority of the Planning Commission recommends be reviewed.*
- B. Review by the Board shall be initiated by board order within 12 days of the date of the mailing of the final written decision of the Planning Director or lower Hearings Body.*

FINDINGS: By Order 2015-011, dated February 4, 2015, the Board initiated review of this application under DCC 22.28.050 through a de novo hearing. The Board conducted a *de novo* public hearing on March 2, 2015. The Board rendered its oral decision on April 8, 2015.

TITLE 18 OF THE DESCHUTES COUNTY CODE, COUNTY ZONING.

Chapter 18.16, EXCLUSIVE FARM USE ZONES.

Section 18.16.031, Nonresidential Conditional Uses on Nonhigh Value Farmland Only

The following uses may be established only on tracts in the Exclusive Farm Use Zones that constitute nonhigh value farmland subject to applicable provisions of the Comprehensive Plan and DCC 18.16.040 and other applicable sections of DCC Title 18.

...

- E. Private parks, playgrounds, hunting and fishing preserves, and campgrounds.*

FINDINGS: The Board adds to the Administrative Approval the following findings.

The allowance of weddings under the Agri-Tourism and Commercial Activity provisions (DCC 18.16.042) neither precludes nor was intended to preclude private park weddings. In addition, nothing in the statute requires construing “private park” narrowly under *Utsey v. Coos County*.

Section 18.16.040, Limitations on Conditional Uses.

- A. Conditional uses permitted by DCC 18.16.030 may be established subject to ORS 215.296 and applicable provisions in DCC 18.128 and upon a finding by the Planning Director or Hearings Body that the proposed use:*

- 1. Will not force a significant change in accepted farm or forest practices as defined in ORS 215.203(2)(c) on surrounding lands devoted to farm or forest uses; and*
- 2. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest uses; and*
- 3. That the actual site on which the use is to be located is the least suitable for the production of farm crops or livestock.*

FINDINGS: The Board adds to the Administrative Approval the following findings.

Opponents were concerned the record contained insufficient analysis on noise impacts on livestock and traffic impacts. The Board finds that the two studies on the impact of noise on livestock in the record indicate that noise from the proposed use would have no significant adverse impact on livestock. No adverse traffic impacts were identified in the record, which included comments provided by the Deschutes County Transportation Planner or Deschutes County Road Department.

The “least suitable” standard of DCC 18.16.040(A)(3) does not apply to this application under the plain language of the code, as described in the Administrative Approval. If this distinction in the County Code is unintentional, it should be fixed as part of a future text amendment.

Chapter 18.124, SITE PLAN REVIEW

Section 18.124.060. Approval Criteria

Approval of a site plan shall be based on the following criteria:

- A. *The proposed development shall relate harmoniously to the natural environment and existing development, minimizing visual impacts and preserving natural features including views and topographical features....*

FINDINGS: The Board adds to the Administrative Approval the following findings.

As part of this case, the Board need not evaluate current compliance with the 2001 FMP or determine if CU-00-65 requires the resident of the farm dwelling to continue to be principally engaged in farming at a commercial scale. The record demonstrates that the proposed park use would not preclude or significantly interfere with the farm use described in the 2001 FMP, the current farm use of the property, or the desired future farm operations described by the applicant since the park and these farm uses are spatially and/or temporally separated. As such, farm and park uses are harmonious under 18.124.060 and the site is suitable for both uses under 18.128.015.

The Board finds that use of a structure for some park activities is common. Additionally, use of the existing dwelling on the subject property for park activities in this case will be *de minimis*. Therefore, use of the dwelling as part of the park will be conditionally allowed.

The record demonstrates that the use of the dwelling as part of the private park will be harmonious with the existing residential and farm management use of the dwelling. To further ensure compatibility between the multiple uses of the site and to ensure the health and safety of any vendors and attendees at the park's events, the Board requires Deschutes County Environmental Soils, Environmental Health, and Building Safety Divisions approvals be obtained prior to initiation of the park use. The Board amends condition #2 of the Administrative Approval as follows:

The applicant shall obtain all necessary permits from the Deschutes County Environmental Soils, Environmental Health, and Building Safety Divisions, prior to initiation of the use. Specifically, the applicant shall provide written documentation from Deschutes County Environmental Soils, Environmental Health, and Building Safety Divisions to Deschutes County Planning Division that all park structures and facilities are adequate for the proposed park use and comply with all applicable regulations, prior to initiation of the use.

The Board finds that the use of the dwelling in support of the park is not a home occupation¹ regulated under DCC 18.116.280, since allowing park event attendees access to the dwelling is not an occupation or profession carried on by the residents of the dwelling.

¹ DCC 18.04.030 - "Home occupation" means an occupation or profession carried on within a dwelling and/or a residential accessory structure by a resident of the dwelling or employees, depending on type pursuant to DCC 18.116.280 and is secondary to the residential use of the dwelling and/or the residential accessory structure.

Chapter 18.128, CONDITIONAL USE

Section 18.128.015. General standards governing conditional uses.

Except for those conditional uses permitting individual single family dwellings, conditional uses shall comply with the following standards in addition to the standards of the zone in which the conditional use is located and any other applicable standards of the chapter:

A. *The site under consideration shall be determined to be suitable for the proposed use based on the following factors:*

1. *Site, design and operating characteristics of the use;*

...

FINDINGS: The Board adds to the Administrative Approval the following findings.

As part of this case, the Board need not evaluate current compliance with the 2001 FMP or determine if CU-00-65 requires the resident of the farm dwelling to continue to be principally engaged in farming at a commercial scale. The record demonstrates that the proposed park use would not preclude or significantly interfere with the farm use described in the 2001 FMP, the current farm use of the property, or the desired future farm operations described by the applicant since the park and these farm uses are spatially and/or temporally separated. As such, farm and park uses are harmonious under 18.124.060 and the site is suitable for both uses under 18.128.015.

B. *The proposed use shall be compatible with existing and projected uses on surrounding properties based on the factors listed in (A) above.*

FINDINGS: The Board adds to the Administrative Approval the following findings.

Based on testimony provided at the public hearing regarding event duration and noise impacts, the Board includes the following conditions of approval to further minimize potential off-site impacts of the park use.

Set-up and take down of all temporary structures and facilities shall occur no earlier than one business day prior to the events or activities and no later than one business day after the events between 7:00 a.m. and 10:00 p.m.

Nothing in this decision waives compliance with or acts as a variance to the requirements of DCC 8.08, Noise Control

The Board amends condition #9 of the Administrative Approval to specify that a “weekend day” is Saturday or Sunday.”

VII. DECISION:

Based on the findings of fact and conclusions of law set out above, the Board concludes that the applicant has demonstrated that all applicable approval criteria have been met or can be with the compliance with conditions of approval. The Board upholds and adopts the Conditions of Approval in the Administrative Approval as modified below.

Condition #2 of the Administrative Approval is amended as follows:

The applicant shall obtain all necessary permits from the Deschutes County Environmental Soils, Environmental Health, and Building Safety Divisions, prior to initiation of the use. Specifically, the applicant shall provide written documentation from Deschutes County Environmental Soils, Environmental Health, and Building Safety Divisions to Deschutes County Planning Division that all park structures and facilities are adequate for the proposed park use and comply with all applicable regulations, prior to initiation of the use.

Condition #9 of the Administrative Approval is amended as follows.

9. Operations.

- a. The private park shall only be open to event participants one weekend day per week beginning on May 15 of each year and ending on October 15, and shall not exceed 18 days per calendar year.
- b. “Weekend day” is Saturday or Sunday.”
- c. Set-up and take down of all temporary structures and facilities shall occur no earlier than one business day prior to the events or activities and no later than one business day after the events between 7:00 a.m. and 10:00 p.m.
- d. A limit of no more than 250 guests per event would be enforced by the applicant. Any park use on the property by non-residents shall count as an “event”.

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The Board adds the following condition of approval:

13. Nothing in this decision waives compliance with or acts as a variance to the requirements of DCC 8.08, Noise Control

DATED this ____ day of April, 2015.

MAILED this ____ day of April, 2015.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, CHAIR

ALAN UNGER, VICE CHAIR

ATTEST:

Recording Secretary

TAMMY BANEY, COMMISSIONER

THIS DECISION BECOMES FINAL UPON MAILING. PARTIES MAY APPEAL THIS DECISION TO THE LAND USE BOARD OF APPEALS WITHIN 21 DAYS OF THE DATE ON WHICH THIS DECISION IS FINAL.