

PLANNING DEPARTMENT

Room 106, Justice Building
Douglas County Courthouse, Roseburg, Oregon 97470
(541) 440-4289 / Fax (541) 440-6266

DEPT OF

August 23, 2007

AUG 24 2007

**LAND CONSERVATION
AND DEVELOPMENT**

MEMORANDUM

TO: Parties in the matter of the DAN LANGDON & DICK LANGDON, request for a Land Partition based on a Measure 37 Claim Waiver to allow the division of a 241.39 acre parcel into three parcels of 37± acres, 80.90± acres and 123.49± acres in the (FG) Exclusive Farm Use - Grazing zone on Scotts Valley Road, southeast of Yoncalla. Planning Department File No. 07-005.

FROM: Douglas County Planning Department

RE: Board of Commissioners Action on the Appeal filed by the Department of Land Conservation and Development (DLCD).

The Douglas County Board of Commissioners has elected to **DECLINE REVIEW** of the appeal, filed by DLCD, of the Planning Commission's approval of the above-referenced LANGDON request for a Land Partition based on a Measure 37 Claim Waiver. There will be no further local action on the matter. A copy of the Board of Commissioners Order, signed on August 22, 2007, and the Planning Commission Findings of Fact are attached.

attachments

c: Board of Commissioners
Paul E. Meyer, County Counsel
Planning Commission
Keith L. Cubic, Planning Director
Cheryl Goodhue, Senior Planner
PD File No. 07-005

CG:BC LANGDON DECLINE REVIEW NOT TO PARTIES.wpd

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THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY

REPORT OF THE COMMITTEE ON THE
PROGRESS OF THE WORK OF THE
DEPARTMENT OF CHEMISTRY
FOR THE YEAR 1955

CHICAGO, ILLINOIS
1956

AUG 23 2007

BEFORE THE BOARD OF COMMISSIONERS
OF DOUGLAS COUNTY

BARBARA E. NIELSEN, COUNTY CLERK

Re: DAN & DICK LANGDON, request for a)
Land Partition to divide a 241.39 acre parcel)
zoned Exclusive Farm Use-Grazing into three)
parcels of 37± acres, 80.90± acres and)
123.49± acres, as a result of a Measure 37)
Claim Waiver Approval on Scotts Valley Road)
southeast of Yoncalla. PD File No. 07-005)

ORDER

Planning Dept. File No. 07-005

DAN LANGDON & DICK LANGDON ("applicant") requested a Land Partition to allow the division of a 241.39 acre parcel into three parcels of 37±, acres, 80.90± acres and 123.49± acres in the Farm-Grazing zone, as the result of a Measure 37 Claim Waiver approval. The Douglas County Planning Commission ("Commission") heard the matter on June 21, 2007 on appeal of the Planning Director's approval, and unanimously affirmed the Planning Director's Decision. On July 19, 2007, the Commission signed Findings of Fact affirming the Planning Director's Decision, subject to the eight conditions outlined in the Director's tentative approval.

The Department of Land Conservation and Development (DLCD), opposition parties in the matter, filed a timely appeal of the Commission Decision. The Measure 37 Claim Waiver was granted by both the State and the County to Percy Langdon. Upon the death of Percy Langdon, it was DLCD's contention that the Measure 37 Claim approval became void. It is the opinion of Douglas County Counsel that the Measure 37 Claim Waiver issued to Percy Langdon is an asset of his Estate and that his sons, Dan and Dick Langdon, as the Court-appointed Personal Representatives of the Estate, are entitled to maximize the value of that asset. DLCD contends the Measure 37 Claim Waiver is not transferrable and therefore Dan and Dick Langdon are not entitled to the Waiver. The County maintains that no transfer has occurred; Dan and Dick Langdon are owners of interest in the Percy Langdon Estate and are entitled to exercise the Measure 37 Claim approval via the subject Land Partition.

The Board members individually reviewed the procedural facts in the Record, and determined the Planning Commission Decision contains a thorough and accurate Record, which includes a legal opinion from County Counsel and a letter of support of the County's position from Oregonians in Action. The Board agrees with the Commission's finding that DLCD's appeal of a Land Partition that, based on the Measure 37 waiver would allow one of the three parcels to go below the current minimum parcel size, is indicative of the chronic lack of flexibility that led to passage of Measure 37, and a missed opportunity for DLCD to assist an applicant. In the interest of allowing the matter to move forward for the sake of the applicants by eliminating an additional hearing before the Board, the Board opted to decline review of this matter.

Review by the Board of Commissioners is controlled by Douglas County Land Use and Development Ordinance ("LUDO") Section 2.700.8:

"Review by the Board is discretionary. After a Notice of Review is filed, the Board may choose to either: 1) allow review, in which case, the Board shall decide to either hear the matter itself and set a date for holding the review hearing, or the Board may, for any reason, appoint a Hearings Officer to review the matter and make a final local decision in the Board's place, or; 2) decline to review the matter, so long as the appealed decision does not involve a Plan Amendment of land designated agricultural or forest land or a goal exception. If Board review of a matter is declined, the lower decision shall stand. If Board review of a matter is declined, the Board shall adopt an order so stating, but the order need not state any reason for the Board's decision to decline review."

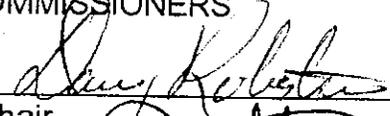
Review is discretionary so long as the application does not involve either a Plan amendment or a goal exception. The subject Land Partition clearly does not involve a goal exception, nor does it involve a Plan Amendment of land designated agricultural or forest land.

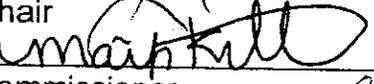
In the Board of Commissioners' discretion, review is declined. Because we decline review, the Commission's Decision – in the words of LUDO §2.700.8 – "shall stand." In other words, it is affirmed. The Commission's Decision of July 19, 2007 is attached hereto and incorporated herein as the County's final decision.

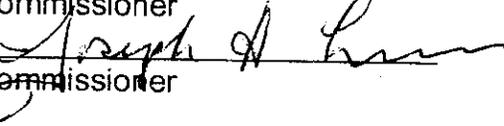
Review is declined.

Dated: August 22, 2007

DOUGLAS COUNTY BOARD OF
COMMISSIONERS

By 
Chair

By 
Commissioner

By 
Commissioner

BEFORE THE DOUGLAS COUNTY PLANNING COMMISSION

Dan Langdon and Dick Langdon, Findings of Fact and Decision, Planning Department File No. 07-005.

On appeal of the Planning Director's Administrative Decision, this matter came for hearing before the Douglas County Planning Commission on June 21, 2007, in Room 216 of the Douglas County Courthouse.

The Planning Commissioners present at the hearing were: Rick Barnes, David Jaques, James Mast, Brian Parkinson, Rich Raynor and Ed Stratton.

The Planning Commission takes official notice of the following:

1. The Douglas County Comprehensive Plan, including the implementing Douglas County Land Use and Development Ordinance, adopted by the Douglas County Board of Commissioners December 31, 1980, effective April 1, 1981, and as later amended, which has been acknowledged by the Land Conservation and Development Commission on December 21, 1982, and by Compliance Acknowledgment Order 83-ACK-12 dated January 18, 1983.
2. The records of the Planning Department of Douglas County concerning publication and mailing of notice.

FINDINGS OF FACT

1. Application was filed and deemed complete with the Planning Department on January 9, 2007, which was at least 30 days prior to the June 21, 2007 public hearing.
2. At least 20 days prior to June 21, 2007, notice of the public hearing was sent by mail to the applicant, to all property owners within 750 feet of the property which is the subject of the application, to service providers and governmental agencies and to the Elk Creek Planning Advisory Committee.
3. Notice of the hearing was given by publication in the News Review at least 20 days prior to June 21, 2007.
4. At the June 21, 2007 public hearing, we recognized the following parties in the matter: Dan and Dick Langdon, applicants; Schofield & Associates, Ron Schofield, applicants' representative; Percy and Lucille Landgon (deceased) titleholders; the Elk Creek PAC; Douglas County Public Works, Vic Cangie; Douglas County Watermaster, Dave Williams; DLCD, Lane Shetterly, Director, appellant; DLCD, Carmel Bender, Measure 37 Division; DLCD, John Renz, Southern Oregon Regional Representative; Damayanti and Ram Ramakar and; Oregonians in Action.
5. Staff entered Staff Exhibits 1 through 23, together with a bound duplicate copy of the Record, into the Record and presented the oral staff report.
6. We heard testimony from the applicants' representative, Ron Schofield, who submitted Applicant's Exhibit 1, Mr. Schofield's written testimony in behalf of the applicants. Mr. Schofield's testimony asserted two issues: 1) DLCD's notice of appeal was not timely, and; 2) the Planning Commission does not have the authority to rule on the validity of a Measure 37 claim, as the Measure 37 statute says a Measure 37 claim does not constitute a land use action. County

July 19, 2007

- Counsel addressed the first issue by explaining that the Planning Department had determined an address error in the initial mailing of the Decision to DLCD; upon being made aware of the error, the Planning Department correctly addressed the Decision and mailed it to DLCD. DLCD's notice of appeal was within the appeal period of the correct mailing of their decision and was, therefore, timely. Counsel addressed the second issue by stating that, while M37 claims are not land use actions, subsequent applications based on M37 waivers are land use actions, which decision-makers such as Planning Commissions and LUBA consider. Counsel recommended that the Commission hear the matter so as to establish a Record.
7. We clarified the scope and purpose of the hearing, stating for the Record that the matter before the Commission is a land partition tentatively approved by the Director as an implementing action of State and local Measure 37 waiver approvals issued to Percy Langdon. The M37 waiver allowed the minimum parcel size of the FG zone to be "not applied;" current platting standards regarding the creation of the parcels, as well as health and safety standards, were applied and required as conditions of the Director's approval. The basis of the DLCD appeal is their contention that State and local M37 waiver approvals issued to Percy Langdon were void upon his death. The Land Partition approval which is the subject of this appeal was filed by Dan and Dick Langdon, as Court-appointed Personal Representatives of the Percy Langdon Estate. Contrary to the opinion of DLCD regarding transferability in the context of M37, the County's Legal Opinion is that Dan and Dick Langdon, as the Court-appointed Personal Representatives of the Percy Langdon Estate, are authorized under Oregon Law to finalize the M37 Waiver via the Land Partition approved by the Director.
 8. We heard testimony from Carmel Bender of DLCD's Measure 37 Division. Ms. Bender testified that it is DLCD's opinion that the Measure 37 waiver approval granted to the deceased Percy Langdon is not transferable to his sons, despite the fact that they are the Court-appointed Personal Representatives of his estate, and that the Director's Decision should be overturned. Chairman Jaques responded to Ms. Bender's testimony, stating that DLCD's appeal is indicative of a chronic problem that has existed since Senate Bill 100 was passed when "goals" became concrete rules, the inflexibility of which led to Measure 7 and Measure 37; the appeal is a missed opportunity for DLCD to assist the applicant.
 9. We accepted into the Record written testimony from Oregonians in Actions, establishing them as parties to the matter. In their written testimony, OIA states they concur with Douglas County Counsel Paul Meyer's legal opinion that the Estate of Percy Langdon has a valid M37 claim. OIA expressed that the Planning Commission needs to understand what DLCD apparently does not, that being that Percy Langdon's M37 waiver is properly viewed as an asset of the Estate; Dan and Dick Langdon, as Personal Representatives of the Percy Langdon Estate, are entitled to maximize the value of that asset. OIA cites the ORS 197.352 definition of "owner" under Measure 37, which articulates that an "owner" is the present owner of the property *or any interest therein*. OIA states DLCD's "narrow view" of the term "owner" ignores the "any interest therein" component of the definition. The OIA testimony states, "*Mr. Meyer's analysis articulates the proper legal standards and reasoning in support of the County Administrator's prior decision,*" and concludes that DLCD's appeal should be denied.
 10. We heard rebuttal from Ron Schofield, the applicants' representative. Mr. Schofield stated for the Record that the assertion of DLCD's position on transferability does not make it so; this issue

July 19, 2007

must be settled by the courts. Mr. Schofield asserted that DLCD's position that the ownership of Percy Langdon's property has been transferred is wrong. Percy Langdon's ownership lives on, as the property is owned by the Estate of Percy Langdon.

11. We heard rebuttal from Dan Langdon, who stated for the Record that he and his brother, Dick Langdon, have been appointed by the Court to represent the estate of their father, Percy Langdon; as such, their responsibilities would include paying any debt owed by their father. Mr. Langdon offered for the Record his belief that, if his father had an unsettled contract with the State to pay a debt, the State would recognize he and his brother as owners of that debt; yet the State does not recognize them as owners of the M37 waiver approval.
12. We heard rebuttal from Dick Langdon, who stated for the Record that the M37 application process was initiated fourteen months prior to his father's death; delays were caused by the agencies involved, not by neglect on the part of his father. Mr. Langdon stated he and his brother have completed the required conditions of the land partition, and it is time for the State to do the right thing and allow this matter to go forward.
13. We found that, in approving the Langdon Land Partition, the Director considered DLCD's comments as their interpretation of the facts; the County's interpretation differs. County Counsel's opinion was included as part of the Record of the Planning Director's Decision and incorporated into the findings for that Decision.
14. We found that the Personal Representatives have not conveyed or otherwise transferred the property which is the subject of this appeal. The Estate of Percy Langdon is still owned by Percy Langdon's Personal Representatives: Dan Langdon and Dick Langdon.
15. This Commission concurs that Dan Langdon and Dick Langdon, as Court-appointed Personal Representatives of the Percy Langdon Estate, are entitled to perfect the Waiver afforded by the M37 claim approvals, as is accomplished by the Director's Decision approving a Land Partition wherein no minimum parcel size is applied.
16. We moved to AFFIRM the Planning Director's Decision, issued on March 30, 2007, subject to the eight (8) conditions attached to the Director's Tentative Approval. The motion passed unanimously.

DECISION

Based on evidence received, testimony received, the findings above and the findings of the Staff Report, we hereby AFFIRM the Planning Director's Decision to TENTATIVELY APPROVE the requested Land Partition, subject to the following conditions:

1. All parcels shall meet the stipulations in the M-37 approval dated December 8, 2006 and the final plat for this land partition shall depict the following statement: **BASED UPON MEASURE 37 WAIVER APPROVAL**. The Final Partition Plat shall substantially comply with the preliminary plat in all aspects except as specifically conditioned by the Director. Any alterations shall be Minor Amendments as defined in the Douglas County Land Use and Development Ordinance (LUDO).

July 19, 2007

2. Existing and future structures shall maintain required setbacks for the FG zone relative to the new boundary lines created through this partition.
3. The applicant shall provide written verification from Douglas County Public Works Department verifying that any existing or proposed access off Scotts Valley Road, County Road No. 8, meets County specifications (access permit(s)).
4. Prior to final approval applicant shall provide proof that a year-round 250 gallons per day potable supply of domestic water exists (Section 4.250 of the LUDO) for **each** parcel.
 - a. If the source of water is a spring(s), a permit from the State of Oregon Water Resources Department for domestic water right is required, unless a statement is submitted from the property owner or licensed land surveyor which certifies that the spring emanates and terminates within the boundaries of the proposed parcel.
 - Applicant proposes a spring for Parcel 3 and shall follow 4a. above to complete.
 - The spring(s) for all parcels must be certified as to quantity by an Engineer, Land Surveyor or qualified hydrologist.
 - A potability test from a certified water lab is required for each spring.
 - b. If the proposed water source will be from a well(s), the applicant will need to submit proof of a year-round, 250 gallon-per-day, potable water supply from the well(s).
 - The well(s) must be certified as to quantity (well log) by a certified well driller.
 - A potability test from a certified water lab is required for the well(s).
 - If the proposed source of water is one well and that well provides water to over three household, State potable water requirements must be met (Oregon Revised Statutes 448.115).
 - c. If a water easement is utilized to serve the proposed parcel(s), then the easement shall be referenced and identified on the face of the final partition plat, along with its recorded deed instrument number, as applicable.
5. Prior to final approval, the applicant shall provide proof of adequate sanitation for each parcel of this partition.
 - Where no septic system exists, the applicant shall provide written verification from Onsite Sanitation (now located in the Planning Department), certifying that **Parcel 2 and 3** have an approved site for an on-site septic disposal system, **OR** the applicant shall provide documentation from a **licensed sanitarian** verifying that, given their size and soil composition, at least one suitable site for septic installation exists within the boundaries of **Parcel 2 and 3**.

July 19, 2007

- Written documentation is required from the approving authority that the existing residence on **Parcel 1** has an approved on-site sewage disposal systems. If such written evidence is not available, the applicant shall provide a septic system evaluation, prepared by a licensed authority qualified under ORS 700 (Sanitarian), which certifies that the existing system is properly functioning. In either case, it must also be shown that the existing septic system is either located entirely on the same parcel containing the existing dwelling, or that proper easements are provided to allow the continued use and maintenance of the system.
- 6. No survey of the proposed parcels is required because the resultant parcels of this partition **must** be greater than 10 acres in size, but a final partition plat prepared by an Oregon Registered Professional Land Surveyor is required for this partition and shall otherwise comply with ORS 209.250 and Section 4.250.3 of the Douglas County Land Use and Development Ordinance.
- 7. All easements for utilities, including water and sewage disposal easements, which do not lie along existing public easement, must be shown on the plat and be in conformance with the minimum requirements of Douglas County Land Use and Development Ordinance (LUDO).
- 8. Pursuant to LUDO Section 4.250.3.h(5), all easements provided for public services, utilities, or access must be shown on the face of the partition plat using bearings, distances and dimensions or a legal description and any limitations of the easements. If it is a preexisting easement or if the easement has been filed with the County Clerk prior to the final approval of the land partition, then the Recorder's number shall appear on the face of the partition plat.

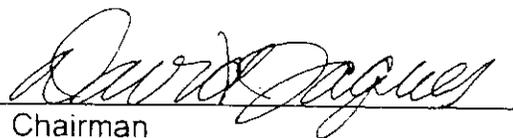
Advisory Statements

1. Upon completion of this land partition, proposed Parcels 2 and 3 (the vacant parcels) are entitled to a single family dwelling based on the approved Measure 37 Claim. Therefore, upon completion of the land partition, the applicant is entitled to a single family dwelling on each vacant parcel based on the approved Measure 37 Claim and subject to the development standards of the FG zone.
2. **We want you to know that Douglas County has granted this waiver based on its understanding of Measure 37. But we want you to know that the meaning of Measure 37 is still being litigated in the courts and court rulings could compromise the validity of this waiver decision. We don't want to scare you by telling you this but we do want to make sure that you know that Measure 37 is still subject to arguments about its interpretation and implementation. Please proceed with your project only after you have weighed out what you would do if you invest in your project and then your Measure 37 waiver is deemed void.**

Dated this 19th day of July, 2007.

DOUGLAS COUNTY PLANNING COMMISSION

By


Chairman

