

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 LANCE BARNETT and)
5 F/V WIDGEON,)
6)
7 Petitioners,)
8)
9 vs.)
10)
11 CLATSOP COUNTY,)
12)
13 Respondent,)
14)
15 and)
16)
17 WARREN JUNES,)
18)
19 Intervenor-Respondent.)

LUBA No. 92-092
FINAL OPINION
AND ORDER

20
21
22 Appeal from Clatsop County.

23
24 Stephen Roman, Astoria, filed the petition for review
25 and argued on behalf of petitioners. With him on the brief
26 was Zafiratos & Roman.

27
28 No appearance by respondent.

29
30 Warren Junes, Astoria, filed a response brief on his
31 own behalf.

32
33 KELLINGTON, Referee; HOLSTUN, Chief Referee; SHERTON,
34 Referee, participated in the decision.

35
36 REMANDED 08/17/92

37
38 You are entitled to judicial review of this Order.
39 Judicial review is governed by the provisions of ORS
40 197.850.

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioners appeal an order of the board of county
4 commissioners approving a conditional use permit for a
5 forest dwelling on a 40 acre parcel zoned Forest (F-80).

6 **MOTION TO INTERVENE**

7 Warren Junes, the applicant below, moves to intervene
8 on the side of respondent in this appeal proceeding. There
9 is no objection to the motion, and it is allowed.

10 **ASSIGNMENT OF ERROR**

11 "The respondent failed to comply with the
12 requirements for approving a forest residence in
13 an F-80 zone because the final order lacks
14 necessary findings and the findings are,
15 therefore, insufficient to support the decision,
16 the decision is not supported by substantial
17 evidence in the whole record and the decision
18 improperly construes applicable law."

19 Clatsop County Zoning and Development Ordinance
20 (CZDO) 3.516 establishes the following standard for approval
21 of forest dwellings in the F-80 zone:¹

22 "* * * the proposed forest residence is necessary
23 for, and accessory to, the forest use of the
24 parcel. * * *"

25 The challenged decision determines the proposed
26 residence satisfies the "necessary for and accessory to"
27 standard articulated by CZDO 3.516 for the following

¹No party argues that OAR Chapter 660, Division 6, has any bearing on this case, and we do not understand that it does. See OAR 660-06-003.

1 reasons. The decision finds the applicant will be required
2 to spend approximately 145 hours per year over a twenty year
3 cycle to manage the forest operations on the parcel. The
4 decision also determines that, generally, an on-site
5 residence deters vandalism and trespass, provides fire watch
6 assistance, and facilitates management oversight for forest
7 operations. Finally, the decision states the proposed
8 forest dwelling is necessary for and accessory to the forest
9 management of the parcel because the dwelling provides "more
10 effective work scheduling," eliminating a 60 minute round
11 trip commute to the subject property from the applicant's
12 present dwelling. Record 11-12.

13 This Board has observed that the "necessary for and
14 accessory to" forest use test for approval of forest
15 dwellings is a significant limitation on the approval of
16 permits for construction of single family dwellings on lands
17 planned and zoned for forest use. Dodd v. Hood River
18 County, _____ Or LUBA _____ (LUBA No. 91-116, February 22,
19 1992), slip op 7-9. Further, we have stated that the
20 necessary for and accessory to test is not satisfied simply
21 because a proposed forest dwelling is convenient to the
22 continuation of the forest use of a parcel, Tipperman v.
23 Union County, _____ Or LUBA _____ (LUBA No. 91-210,
24 February 28, 1992), slip op 3-6, or because the proposed
25 dwelling will enhance the cost effectiveness of forest
26 operations on a forest parcel. DLCD v. Yamhill County, _____

1 Or LUBA ____ (LUBA No. 91-113, December 18, 1991), slip
2 op 8.

3 The challenged decision fails to establish that the
4 proposed dwelling is necessary for and accessory to forest
5 use of the subject parcel. The challenged decision fails to
6 establish a link between the proposed forest management
7 activities and the need for an on-site dwelling. That a
8 dwelling on a forest parcel may generally deter vandalism
9 and trespass, and may provide a site for fire watch
10 assistance, does not establish that a dwelling on a
11 particular forest parcel is required for such vandalism
12 deterrence and fire watch assistance. In this regard, it is
13 important that the findings fail to identify whether, and
14 the extent to which, the subject parcel has historically
15 experienced vandalism or trespass and, if such vandalism or
16 trespass has occurred, whether any deterrence efforts have
17 been made short of approving a dwelling on the parcel.² The
18 findings also fail to explain whether other dwellings in the
19 area are available to provide housing for people to perform
20 security services for the subject property. In addition,
21 that a person may have to commute 60 minutes or spend 145
22 hours per year (approximately 12 hours per month), in the

²Intervenor cites testimony in the record that "there has been a problem with 4-wheel drive vehicles on the property." Record 17. However, this testimony does not establish that a dwelling is necessary to stop persons with four wheel drive vehicles from utilizing the property. Specifically, there is no indication that any efforts to discourage such traffic on the property have been undertaken.

1 absence of forest dwelling approval, to manage the 40 acre
2 forest parcel does not establish the proposed dwelling is
3 necessary for and accessory to the forest use of the parcel.
4 In sum, the findings fail to explain why living on-site is
5 required for performance of the identified forest management
6 duties. The findings are inadequate to establish that the
7 proposed dwelling is "necessary," within the meaning of
8 CZDO 3.516. Because we determine the findings are
9 inadequate, no purpose is served in reviewing their
10 evidentiary support. DLCD v. Columbia County, 16 Or LUBA
11 467, 471 (1988).

12 The assignment of error is sustained.

13 The county's decision is remanded.