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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

STEPHEN G. KRIEGER, Trustee of)
The Krieger Family Trust,)
partner in the Lostine River Ranch,)
Petitioner,)
vs.)
WALLOWA COUNTY,)
Respondent.)

LUBA No. 98-069
FINAL OPINION
AND ORDER

Appeal from Wallowa County.

D. Rahn Hostetter, Enterprise, filed the petition for review.

No appearance by Wallowa County.

HANNA, Board Member; GUSTAFSON, Board Chair, participated in the decision.

REMANDED 10/28/98

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

1 Opinion by Hanna.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the county's approval of a zone permit to allow a dwelling in the
4 Timber Grazing (T/G) zone.

5 **FACTS**

6 The subject property is a vacant 12.66 acre parcel in the county's T/G zone.
7 Petitioner owns adjoining property. On November 3, 1997, the owner of the subject property
8 applied to the county for a dwelling under what is commonly known as the template test set
9 forth in ORS 215.750 and the county's Land Development Ordinance (LDO) 16.015(7).
10 Under LDO 16.015(7)(B), the county may allow a dwelling on forest lands if the subject
11 property is composed of soils capable of producing 21 to 50 cubic feet per acre per year of
12 wood fiber, and all or part of at least seven other lots or parcels that existed on January 1,
13 1993, containing at least three dwellings that existed on that date, are within a 160-acre
14 square template centered on the subject property. Further, pursuant to LDO 16.015(7)(F),
15 applications for forest template dwellings under LDO 16.015(7) must also comply with
16 conditional use criteria at LDO 16.025(5), (6) and (7), pertinent criteria at LDO Article 36
17 regarding salmon habitat, and any pertinent requirements of the county's comprehensive plan
18 or zoning ordinance.

19 On December 22, 1997, the county planning director conditionally approved the
20 application without providing notice to adjoining property owners or providing opportunity
21 for a quasi-judicial hearing.¹ Petitioner received actual notice of the decision on April 12,
22 1998.

23 This appeal followed.

¹Neither the county nor the applicant appeared to defend the county's decision.

1 **FIRST ASSIGNMENT OF ERROR**

2 Petitioner argues that the county erred in failing to provide notice to adjoining
3 landowners of the pending application or the challenged decision, as required by LDO
4 Article 4. Petitioner contends that the challenged decision involves impacts on neighboring
5 properties and the exercise of discretion and thus the county was required to apply the
6 administrative review procedures described in LDO 4.010, including the procedures for
7 notice to affected landowners described in LDO 4.020.²

8 LDO 4.010 describes the purpose and scope of the county's administrative review
9 procedures:

10 "The purpose of [LDO Article 4] is to provide the procedural guidelines for
11 reviewing applications for uses and developments which may impact
12 neighboring properties and developments but not to the extent of requiring a
13 public hearing review. The Administrative Review authority has some
14 discretion regarding the applicant's compliance by applicable review standards
15 and criteria, setting forth conditions of approval, and requiring performance
16 guarantees."

17 In contrast to the administrative review procedures at LDO Article 4, the "ministerial
18 review" procedures at LDO Article 3 apply where "little or no discretion [is given] to the
19 review authority[.]" LDO 3.010. Review under LDO Article 3 is limited to ensuring that the
20 application complies with "specified site use or development standards as set forth in this
21 ordinance." Id. Thus, it appears that the administrative review procedures at LDO Article 4
22 apply, rather than the ministerial review procedures at LDO Article 3, where the proposed
23 use or development "may impact" neighboring properties and where the applicable review

²LDO 4.020(1) provides in relevant part:

"Administrative Review requires written notice of review to be given to owners of property
lying within:

"* * * * *

"C. Five Hundred (500) feet of the exterior boundary of the subject property where the
subject property is within a farm or forest zone."

1 standards and criteria allow the exercise of some discretion and for imposition of approval
2 conditions.

3 We agree with petitioner that approval of a forest template dwelling under
4 LDO 16.015(7) requires the application of conditional use criteria and other criteria requiring
5 the exercise of discretion, and is thus subject to the administrative review procedures at LDO
6 Article 4 rather than the ministerial review procedures at LDO Article 3. Pursuant to
7 LDO 16.015(7)(F), forest template dwellings approved under LDO 16.015(7) must comply
8 with conditional use criteria at LDO 16.025(5), (6) and (7), pertinent criteria at LDO Article
9 36 regarding salmon habitat, and any pertinent requirements of the county's comprehensive
10 plan or zoning ordinance. Further, the context of LDO 16.015(7) indicates that applications
11 for forest template dwellings under LDO 16.015(7) are governed by administrative rather
12 than ministerial review procedures. LDO 16.015(21) expressly requires that applications to
13 alter, restore or replace dwellings in the T/G zone are "subject to the provisions of Article 3,
14 Ministerial Review[.]" That some permitted uses in the T/G zone are expressly made subject
15 to ministerial review procedures, while other permitted uses such as forest template
16 dwellings are not, strongly suggests that applications for forest template dwellings are not
17 subject to ministerial review procedures.

18 Accordingly, we conclude that the county erred in failing to provide adjoining
19 landowners with notice of the application and notice of the decision as required by LDO
20 4.020. The county's failure to provide the requisite notice prejudiced petitioner's substantial
21 rights to participate in the decision process. ORS 197.835(9)(a)(B); Hood River Sand v.
22 City of Mosier, 24 Or LUBA 381 (1993).

23 The first assignment of error is sustained.

24 **SECOND ASSIGNMENT OF ERROR**

25 Petitioner argues that the county approved the challenged template dwelling without
26 making adequate findings of fact supported by substantial evidence.

1 The challenged decision is a single-page form that contains blanks for the subject
2 property's legal description, its zoning, size and the names of addresses of the applicant and
3 any representatives. At the bottom of the form are blanks and signature lines for the county's
4 actions. The county's action indicated on the challenged decision is to "conditionally
5 approve" the template dwelling permit. Record 10.

6 Petitioner contends that the challenged decision is not supported by adequate
7 findings. Adequate findings must (1) identify the relevant approval standards, (2) set out the
8 facts relied upon, and (3) explain how the facts lead to the conclusion that the request
9 satisfies the approval standards. Le Roux v. Malheur County, 30 Or LUBA 268, 271 (1995).
10 We agree with petitioner that the decision contains no findings with respect to the template
11 dwelling criteria at LDO 16.015(7), and further that the county failed to address the criteria
12 at LDO 16.025(5), (6) and (7), LDO Article 36, and any relevant provisions of the county's
13 comprehensive plan as required by LDO 16.015(7)(F).

14 Because the county's findings regarding applicable LDO provisions are nonexistent
15 and hence inadequate, no purpose is served in reviewing the evidentiary record to determine
16 whether the county's findings are supported by substantial evidence. Murphy Citizens
17 Advisory Comm. v. Josephine County, 25 Or LUBA 312, 326 (1993).

18 The second assignment of error is sustained.

19 The county's decision is remanded.