

Comments for Open Record Period in RDF 22-04

Devin Kesner <devin@friends.org>

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To: Board of Commissioners Office <BoardofCommissionersOffice@columbiacountyor.gov>

Cc: Deborah Jacob <Deborah.Jacob@columbiacountyor.gov>

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Hello,

Please include the following comments in the record for the forest template dwelling application RDF 22-04 (Tax Map 7315-B0-02500). **Please confirm receipt of these comments and notify me of any future hearings, opportunities to comment, or decisions on this application.**

The January 25 Supplemental Findings still do not meet the standard for adequate findings. Findings must (1) identify the relevant approval standards, (2) set out the facts which are believed and relied upon, and (3) explain how those facts lead to the decision on compliance with the approval standards. *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992). Incomplete and overly conclusory findings are insufficient. *Turner Community Association v. Marion County*, 37 Or LUBA 324, 345–50 (1999) (stating that an explanation of why certain mining operations will not affect area farm practices is necessary to be legally sufficient.). Additionally, the decision must be supported by substantial evidence. ORS 197.835(9)(a)(C). Substantial evidence is evidence a reasonable person would rely upon in reaching a decision. *Younger v. City of Portland*, 305 Or 346, 358-60, 752 P2d 262 (1988). The findings rely on conclusory statements unsupported by substantial evidence regarding the properties' conveyance history that fail to meet these standards.

The January 25 Supplemental Findings provide some deed evidence and explanation for each property included in the template test. For conveyances that occurred after the adoption of the 1963 Subdivision Regulations, the findings rely on the bare assertion that “there is no evidence that [the creation of the property] was associated with the creation of three or more other parcels.” This statement is theoretically intended to demonstrate compliance with the 1963 Subdivision Ordinance’s requirement for county approval of a subdivision of land into four or more parcels of less than five acres in a single calendar year. See *also* ORS 92.010 (1963) (defining subdivision similarly) That each property included in the template test was lawfully established is a criterion that must be met based on substantial evidence and supported by adequate findings. This includes a demonstration that any conveyance complied with the 1963 Subdivision Ordinance if it occurred when in effect.

The issue of the conclusory nature of these findings is exemplified by looking at the warranty deed provided for TL 7315-B0-01800, TL 7315-B0-01700, and TL 7315-B0-01300. All are conveyed by the same warranty deed on Deed Book 165 Page 503 from the same grantors to the same grantees. This warranty deed describes the conveyance of three “parcels” that are associated with the tax lots above, which all sit adjacent to one another. It is not clear from the warranty deed whether these properties that are described as “parcels” had existing property lines prior to this conveyance. There is not substantial evidence that this warranty deed constituted the creation of these properties and that no other conveyances occurred in the same calendar year that would require county approval under the 1963 Subdivision Ordinance.

Additionally, there does not appear to be evidence of the creation of TL 7315-B0-01500 and TL 7315-B0-01400 as addressed by Finding 9. The Deed Book references indicated in the Findings were not included as a part of Attachment A.

To meet the *Heiller* standard for adequate findings, the application must be supported by more than the absence of evidence to demonstrate compliance with the applicable criteria. Per the 1963 Subdivision Ordinance, the county needs to rely on evidence that the parent parcel was not further divided during the same calendar year. That can be shown by providing the chain of title for the parent parcel. Or the county can provide evidence that there was no parent parcel. Evidence exists to prove that point, and it is the county and applicant's burden to provide that evidence.

Best,

Devin Kesner
Associate Attorney
devin@friends.org
Phone: 971.420.0922

[she/her/hers](#)



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