

WALLOWA COUNTY PLANNING COMMISSION

WALLOWA COUNTY COURTHOUSE
101 S. RIVER STREET, ROOM B-1
ENTERPRISE, OR 97828

**IN THE MATTER OF AN APPEAL
REGARDING A MINISTERIAL
DECISION ON THE DEFINITION OF
STRUCTURES**

)
) **FINDINGS OF FACT,**
) **CONCLUSIONS, AND DECISION**
) **OF THE WALLOWA COUNTY**
) **PLANNING COMMISSION**
)

APP#10-02, Blakesley, Definition of Structures

After a discussion with Deena Blakesley, there was a site visit by staff on April 30th, with letter of decision re the definition of structures written on May 4th, 2010. The request for an appeal was received on May 13th, 2010 and was properly advertised in the Wallowa County Chieftain on June 17th and July 15th, 2010. Applicable property owners and appellants were notified by mail on June 15th, 2010. The request came before the Wallowa County Planning Commission for Hearing on June 29th and July 27th, 2010 with decision on August 31st, 2010. These findings are for appeal of a ministerial decision, specifically, the definition of structures. The Planning Commission, having reviewed the record, the materials introduced in the above-referenced hearing, and having heard and considered oral testimony in the above-referenced hearing, and being fully advised, makes the following findings of fact and decision.

01. **APPELLANT:** Mark and Deena Blakesley
02. **REPRESENTATIVE:** Same
03. **REQUEST:** Appeal of Ministerial Decision on the Definition of Structures contained in a letter to Dennis Grote and David Park dated May 4, 2010.
04. **REVIEW CRITERIA:** Article 1, Introductory Provisions, Section 1.065 (109); Article 5, Public Hearing Review, Sections 5.025(01-03) and 5.030; Article 7, Appeals; Article 54, Resort Residential, Sections 54.030 Design Standards and 54.035 (04) Setbacks; and any other applicable ordinances or goals of the Wallowa County Land Development Ordinance and/or laws of the State of Oregon.

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SECTION 5.025, NOTICE OF PUBLIC HEARING:

01. Public Hearing Review requires notice of hearing be given to all owners of property lying within:
 - A. One hundred (100) feet of the exterior boundary of the subject property where the subject property is wholly or in part within an urban growth boundary;
 - B. Two hundred and fifty (250) feet of the exterior boundary of the subject property where the subject property is outside an urban growth boundary and not within a farm or forest zone;
 - C. Seven hundred and fifty (750) feet of the exterior boundary of the subject property where the subject property is within a farm or forest zone.

The Director will provide notice to other parties should it be determined their interests may be affected by the proposal or they have other need for notice. The notice shall be mailed or otherwise delivered no later than ten days prior to the hearing date.

02. Notice of public hearing shall be placed in a newspaper of general circulation no later than 10 days prior to the hearing date nor greater than twenty 20 days prior to the hearing date.
03. Notice of public hearing shall be posted on the Wallowa County Courthouse Public Notice Board no later than 10 days nor greater than 20 days prior to the hearing date.

FINDING 4.1: The Planning Commission finds the public hearing was properly noticed to the appellant, and all other property owners within 250 feet of the subject property, in a newspaper of general circulation and was posted on the Wallowa County Courthouse Public Notice Board prior to the hearing within the required time frame. See discussion above.

SECTION 5.030, CONDUCT AND ORDER OF HEARING: The rules of conduct and the order of the public hearing shall be as prescribed in the Wallowa County Conduct of Hearings Ordinance unless supplemented by rules adopted prior to the commencement of the evidentiary portion of the hearing.

FINDING 4.2: Prior to the commencement of the evidentiary portion of the hearing the Planning Commission adopted the Quasi-Judicial procedures as rules of conduct for the hearing.

SECTION 7.015, APPEAL AUTHORITY:

01. Decisions by the Planning Director shall be subject to appeal to the Planning Commission.

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02. Decisions by the Planning Commission shall be subject to appeal to the Wallowa County Court.
03. Decisions reached by the Planning Commission in its capacity as an appellate body shall be subject to appeal to the Wallowa County Court.
04. Nothing in this ordinance shall prevent appeal to the State Land Use Board of Appeals (LUBA), as provided by ORS Chapter 197.
05. Appeal of a decision to the Land Use Board of Appeals (LUBA) shall follow the requirements of ORS 197.805 through 197.860.

FINDING 4.3: The subject of the appeal is a ministerial decision, contained in a letter to Dennis Grote and David Park dated May 4, 2010, made by the Planning Director, therefore, the Commission finds that the appeal was correctly heard by the Planning Commission and that the Planning Commission has jurisdiction over this appeal.

SECTION 7.020, INITIATION OF APPEAL: A decision of a review authority, pursuant to this ordinance, may be appealed by a party with standing to appeal and within the prescribed time limits. The filing of an appeal shall be accompanied by the fee prescribed by resolution of the Wallowa County Court. The appeal document which is filed shall list at least the following information.

01. An identification of the decision sought to be reviewed including the date of the decision.
02. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings.
03. The specific grounds for appeal as they relate to relevant review criteria.

FINDING 4.4: On May 14th, 2010, the Planning Department received from, Baum, Smith & Eyre, LLC, then representative of the appellant, a letter, dated May 13th, which contained the above information.

SECTION 7.025, SCOPE OF REVIEW ON APPEAL: The scope of review on appeal shall be restricted to the record made on the decision being appealed, unless the appeal authority issues an order stating the scope to be one of the following:

01. Limited to such issues as the reviewing body determines necessary for a proper resolution of the matter.

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02. A De Novo hearing on the merits with new evidence allowed.

FINDING 4.5: The Planning Commission has ruled that the appeal shall be heard De Novo. See Finding 4.8 below.

SECTION 7.030, REVIEW OF THE RECORD:

01. Unless otherwise provided for by the appeal authority, review of the decision on appeal shall be confined to the record of the proceeding as specified in this section. The record shall include:

A. An oral or written factual report prepared by the Planning Director.

B. All exhibits, materials, pleading, memoranda, stipulations, and motions submitted by any party and received or considered in reaching the decision under review.

C. The minutes of the hearing below and a detailed summary of the evidence.

02. The appeal authority shall make its decision based upon the record after first granting the right of argument but not the introduction of additional evidence to any party who has filed a notice of appeal.

FINDING 4.6: The Planning Commission has ruled that the appeal shall be heard De Novo. See Finding 4.9 below.

SECTION 7.035, NOTICE OF APPEAL HEARING: Notice of the hearing held by an appeal authority to consider an appeal shall be mailed at least ten days prior to the hearing to the appellant and all persons who have standing in the proceeding of the issue on appeal.

FINDING 4.7: The Planning Commission finds that the above criteria have been met. See discussion on page 1.

SECTION 7.040, DE NOVO REVIEW: The appeal authority may decide to hear the entire matter De Novo as defined in Section 1.065. The appeal authority shall consider all of the following in making such a decision.

01. Prejudice to the parties.

02. Convenience or availability of proposed new evidence at the time of the initial hearing.

03. Surprise to opposing parties.

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04. The competency, relevancy, and materiality of the proposed new testimony or other evidence.

FINDING 4.8: As the decision subject to the appeal was ministerial and the neighbors had no opportunity to testify, the Planning Commission has ruled that this appeal be heard De Novo due to surprise to opposing parties.

SECTION 7.045, APPEAL AUTHORITY DECISION:

01. Upon review; the appeal authority may by order affirm, reverse, modify, or remand in whole or part a determination or requirement of the decision that is under review. When the appeal authority renders a decision that reverses a decision of the hearing body, the appeal authority, in its order, shall set forth its finding and state its reasons for taking the action encompassed in the order.

When the appeal authority elects to remand the matter back to the hearing body for such further consideration as it deems necessary, it shall include a statement explaining the error found to have materially affected the outcome of the original decision and the action necessary to rectify such.

02. Action by the appeal authority shall be decided by a quorum of its members present at the meeting at which review was made and shall be taken either at that or any subsequent meeting. The appeal authority shall render its decision no later than 30 days from the date at which review was made unless otherwise agreed to by the parties and shall file that decision with the County Clerk within twelve days after it is rendered.

FINDING 4.9: The Planning Commission finds that the storage enclosures referenced in the appealed decision are not structures and therefore the appeal is denied. Additionally, this decision was reached by a quorum of Planning Commission members. See Finding 4.10.

SECTION 1.065, DEFINITIONS: For the purpose of this ordinance and as used in this ordinance, the following words and phrases are so defined:

109. **STRUCTURE** - A building or other improvement of any kind that is built, constructed, or installed, or any piece of work artificially built up or composed of parts joined together in some definite manner, but not including minor improvements such as fences or irrigation system components, that are customarily not regulated through zoning ordinances. Structures include roads and trails.

FINDING 4.10: If Mr. Grote were to move, the material stored and the enclosures needed for storage would move with him and therefore these enclosures are temporary. Also, the

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County assessor assigns no value to these structures as they are viewed as temporary. The Planning Commission finds that whereas the above definition of structures is broad, structures have, historically, as a matter of policy, have not included temporary enclosures used for storage.

Additionally, although the county has no lower size limit contained in the above definition, Building Codes, whose definition is referenced by the appellant, uses a 200 sq ft lower limit for structures requiring permits. The Commission also finds that as all of the enclosures referenced in this appeal are less than 200 sq ft, they are not structures.

SECTION 54.030, DESIGN STANDARDS: For both Permitted and Conditional uses in the Resort Residential Zone, a lot or parcel may be used and a structure or part of structure, constructed, reconstructed, or altered only after the following design requirements have been met. Proposed permitted use development meeting all design standards are subject to Ministerial Review; those not conforming with one or more of these standards shall be subject to Administrative Review or Article 10, Variance Procedure, while conditional use adherence to design standards will be considered in Public Hearing Review.

01. **STRUCTURE HEIGHT:** Building heights shall be limited to 25 feet above grade measured vertically from the highest point of the grade against the structure to a line perpendicular to the highest point of the structure. If the lot is larger than minimum, a building height of more than twenty-five feet may be approved subject to the Public Hearing Review process and a finding that the building height is in proportion to the lot size and is in harmony with surrounding properties.

02. **EXTERIOR WALLS, FENCES AND TRIM:** Exterior siding materials accepted by the review authority are natural wood, board & batt, rough sawn, T1-11 paneling, and other siding materials having an appearance comparable to the wooden materials listed. Other siding materials subject to Administrative Review for compliance with the purpose of the zone and these design standards.

Colors shall be chosen from a color selection chart which is available for review in the Planning Department, shall be non-reflective, and conform to and blend with the surrounding area. Colors not shown on the chart will be subject to Administrative Review for compliance with the purpose of the zone. Submission of samples for review of materials and colors to be utilized may be required.

No fence may exceed six feet and six inches in height from ground level. Chain link fences will only be allowed with prior approval of the review authority.

03. **ROOFS:** To achieve harmonious appearance, roofs must have a minimum pitch of 4/12. However, a roof pitch of 3/12 may be allowed upon demonstration to the review

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authority that a 4/12 roof pitch is not feasible but that the structure otherwise meets design standards. The color of roofing material shall be chosen from a color chart which is available for review in the Planning Department, and it shall be non-reflective dark shades of blue, green, brown, and gray. Colors not shown on the chart will be subject to Administrative Review for compliance with the purpose of the zone and design standards.

04. **FIRE SAFETY:** Roofs shall be fire retardant, Class A or B as defined in the Uniform Building Code of the State of Oregon.

[.....]

SECTION 54.035, PROPERTY DEVELOPMENT STANDARDS:

[.....]

04. **SETBACKS:** To insure setback requirements are met, setback and service district easement lines shall be flagged. Before construction is begun, a setback inspection shall be requested by the property owner and may be performed by the Planning Department. Setback measurements shall be to the nearest permanent structure or structural appendage, including patios, decks, eaves, overhangs.

FRONT YARD: Not less than 25 feet from the property line.

SIDE YARD: Not less than 7 feet from the property line.

REAR YARD: Not less than 15 feet from the property line.

The front or rear yard setback may be decreased to 15 and 10 feet respectively, provided there is a corresponding increase in the setback for the opposite or side yard.

FINDING 4.11: The Planning Commission finds that, whereas the above criteria apply to structures and the Commission has found that the storage enclosures in question are not structures, the above criteria do not apply.

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06. CONCLUSION:

It is the decision of the Planning Commission that all applicable criteria have not been met. Therefore, the Planning Commission finds that the appeal (APP#10-02) is denied and the ministerial decision made regarding the Definition of Structures is upheld.

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07. DECISION:

Based upon the information submitted, the comments of interested parties, and the findings, the review authority finds this request for an appeal satisfies all review criteria and is hereby upheld and the ministerial decision in regarding VAR #07-03 is reversed. The vote on the motion is _____ in favor and _____ opposed with _____ abstaining.

August 31, 2010
DATE OF ACTION

GENE KOZOWSKI, CHAIRMAN
WALLOWA COUNTY PLANNING COMMISSION

This decision may be appealed to the Wallowa County Board of Commissioners pursuant to Article 7, Appeal. The provisions of Notice of Intent to Appeal accompanied by the appeal fee must be received by the Wallowa County Planning Department by 5:00 p.m. September 13th, 2010.

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