

# WALLOWA COUNTY BOARD OF COMMISSIONERS

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

---

IN THE MATTER OF AN APPEAL OF )  
A DETERMINATION OF DISCRETE )  
PARCELS IN THE EXCLUSIVE ) **FINDINGS OF FACT, CONCLUSIONS,**  
FARM USE AND TIMBER GRAZING ) **AND DECISION OF THE WALLOWA**  
ZONES WITHIN THE GOAL 5 ) **COUNTY BOARD OF**  
MORAINES PROTECTION AREA ) **COMMISSIONERS**

## **Yanke Appeal, APP#14-10, Appeal of Yanke Discrete Parcel Determination for ZP#13-62, 63, and 64**

The Planning Department received Ronald C. Yanke Family Trust's Amended Notice of Appeal on March 5<sup>th</sup>, 2014. Property owners within 750 feet and other interested parties with standing were noticed on March 14<sup>th</sup>, 2014. The Planning Commission initially met on March 25<sup>th</sup>, 2014 in a *de novo* hearing. The written record was left open, per the appellant's request, to allow for further testimony and responses through April 15<sup>th</sup>, 2014. The Planning Commission (PC) met in special session on April 17<sup>th</sup>, 2014 to review the record and reach a decision. At this hearing the PC voted to send the appeal to the County Board of Commissioners (BOC) without a decision. The BOC met on May 19<sup>th</sup>, 2014 in a de-novo public hearing to allow for new testimony. Then the BOC met in special session on Friday May 23<sup>rd</sup> for decision with findings available for adoption on June 2<sup>nd</sup>, 2014.

These Findings are for an appeal of the discrete parcel determination for ZP#13-62, 63, and 64 within the Goal 5 Moraine Protection Area per Measure 49 Final Order Election Order E133008, and Circuit Court Judgement, Case # 10-07-13380. The BOC, 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:** Ronald C. Yanke Family Trust
02. **REPRESENTATIVE:** Rahn Hostetter
03. **OWNER/APPLICANT** Ronald C. Yanke Family Trust
04. **REQUEST:** Appeal of Discrete Parcel Determination for ZP#13-62, 63, and 64

---

## FINDINGS

Yanke Appeal, APP#14-10, Appeal of Yanke Discrete Parcel Determination for ZP#13-62, 63, and 64  
June 2<sup>nd</sup>, 2014

05. **REVIEW CRITERIA:** Article 7, Appeals; Measure 49 Final Order, Election # E133008; Circuit Court Judgment, Case # 10-07-13380; Wallowa County Comprehensive Land Use Plan (WCCLUP), Goal 5 Moraine Protection Area; and any other applicable ordinances or goals of the Wallowa County Land Development Ordinance and/or laws of the State of Oregon.

**SECTION 7.015, APPEAL AUTHORITY:**

01. Decisions by the Planning Director shall be subject to appeal to the Planning Commission.
02. Decisions by the Planning Commission shall be subject to appeal to the Wallowa County Board of Commissioners.
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 5.2:** The subject of the appeal is zone permits ZP#13-62, 63, and 64 and the associated administrative decision involving the Discrete Parcel Determination, made by the Planning Director, therefore, the BOC finds that the appeal was correctly heard first by the Planning Commission and then the Board of Commissioners. The BOC has made the final county decision regarding 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 Board of Commissioners. 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.

---

---

**FINDINGS**

**FINDING 5.3:** The Planning Department received the Ronald C. Yanke Family Trust's Amended Notice of Appeal on March 5<sup>th</sup>, 2014 by hand delivery, which contained the above information. (The original Notice was received on March 4<sup>th</sup> and was deemed to contain insufficient specificity.)

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

**FINDING 5.4:** The PC ruled at the beginning of its March 25<sup>th</sup> public hearing that their appeal hearing shall be heard *de novo* as no parties had yet had the opportunity to present oral testimony. The BOC also held their hearing as *de novo* to allow for more public input.

**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 5.5:** See Findings 5.4 and 5.7. The PC held the appeal hearing of March 25<sup>th</sup> as a *de novo* hearing which was held using a quasi-judicial procedure with the appellant having first right of argument. Also, the above mentioned materials were made available to the PC and the appellant.

---

---

## FINDINGS

The BOC held their hearing on May 12<sup>th</sup>, as a *de novo* hearing which was held using a quasi-judicial procedure with the appellant having first right of argument. Also, the record from the PC hearings was included in the BOC's hearing record.

**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 5.6:** The BOC finds that both its and the PC public hearings were properly noticed to the appellant, others with standing, neighbors and other interested parties, and 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 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.
04. The competency, relevancy, and materiality of the proposed new testimony or other evidence.

**FINDING 5.7:** See Finding 5.4. To give all parties the opportunity to present oral testimony, the PC and the BOC ruled to hold their hearings as *de novo* hearings, and used a quasi-judicial procedure. Also, the PC ruled to include the record from the Administrative review in the Public Hearing record.

**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.

---

---

## FINDINGS

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 5.8:** The PC met in public hearing on March 25<sup>th</sup>, 2014 and a quorum was present. The PC reviewed the record, the materials introduced in the above-referenced hearing, and heard and considered oral testimony. At the request of the appellant's representative, the PC decided to keep the record open for additional written testimony. The Public Hearing portion of the meeting was closed, and after discussion, the PC continued the meeting to April 17<sup>th</sup>, to review additional comments and reach a decision.

At its May 17<sup>th</sup> meeting, the PC could not reach a decision and voted to pass the matter on to the County BOC.

The BOC met in *de novo* session on May 19<sup>th</sup> and after listening to testimony met in special session on May 23<sup>rd</sup> to reach a decision with findings adopted on June 2<sup>nd</sup>, 2014.

The BOC having reviewed the record and the materials introduced in the above-referenced hearings, and having heard and considered oral testimony found the appellant's arguments compelling and upheld the appeal and overturned the administrative decision regarding discrete parcel determination for ZP#13-62, 63, and 64.

The BOC remanded the zone permits to the PC for site and design review, once the BOC's decision has become final and all appeals have been exhausted.

## **GOAL 5 MORaine PROTECTION AREA**

ORS 92.017 states, "A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law."

Although there is public support for not developing on the crest of the east moraine, the BOC found, per ORS 92.017, that the county does not get to parse out discrete buildable parcels from the discrete parcel determination. In other words, a discrete parcel is a discrete parcel whether considering legality or buildability. Therefore, the Goal 5

---

---

## **FINDINGS**

Yanke Appeal, APP#14-10, Appeal of Yanke Discrete Parcel Determination for ZP#13-62, 63, and 64  
June 2<sup>nd</sup>, 2014

arguments become moot for purposes of discrete parcel determination. As these are discrete parcels under Oregon parcel law, and since the subject applications involve homesites previously approved by the DLCD's Measure 49 Final Order, the county has no discretion or authority to decide that the parcels are not buildable due to Goal 5 restrictions.

### **MEASURE 49 FINAL ORDER**

The BOC finds that the Measure 49 Final Order does allow for three homesites within tax lot 1500 and that DLCD found that the homesites would not have been prohibited under regulations in place at the time of the Ronald C. Yanke Family Trust acquisition date, including Goal 5 protections in effect at the time.

### **CIRCUIT COURT JUDGEMENT**

The BOC finds that the Court Judgment modified the Measure 49 Final Order to clarify that "existing parcels" in tax lot 1500 included all discrete parcels as defined in ORS 92.017. Although the Court Judgment does say, regarding the number and location of existing or discrete parcels, "that determination shall be made by the governing body," the determination must be made in accordance with Oregon parcel law. LUBA has determined in Thomas vs Wasco County, LUBA No. 2008-206 (2009), that "it is extremely doubtful that counties ever had the authority to adopt local laws that dictated that parcels, which under Oregon real property law exist as legal separate units of land, do not qualify as separate units of land in that county. If counties ever had that authority to override the state's real property laws, it is clear that under ORS 92.017 they no longer have that authority." Id., p. 7-8.

---

---

## **FINDINGS**

Yanke Appeal, APP#14-10, Appeal of Yanke Discrete Parcel Determination for ZP#13-62, 63, and 64

June 2<sup>nd</sup>, 2014

PAGE 6 OF 7

## 06. DECISION:

Based upon the evidence submitted, and these findings, the review authority finds this request for an appeal is hereby upheld and the administrative decision regarding the Discrete Parcel Determination for ZP#13-62, 63, and 64 is overturned.

Additionally, the zone permits ZP#13-62, 63, and 64 are remanded to the Planning Commission for siting and design review considerations.

This decision may be appealed to the appropriate body, either LUBA or Wallowa County Circuit Court, in conformance with the proper regulations and deadlines.

---

---

## FINDINGS

Yanke Appeal, APP#14-10, Appeal of Yanke Discrete Parcel Determination for ZP#13-62, 63, and 64

June 2<sup>nd</sup>, 2014

PAGE 7 OF 7