

**WALLOWA COUNTY
BOARD of COMMISSIONERS
STATE of OREGON**

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STACEY FREGULIA, E.A.

CHAIR SUSAN ROBERTS
COMMISSIONER TODD NASH
COMMISSIONER JOHN HILLOCK

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September 23, 2019

**Wallowa County Board of Commissioners (BOC)
Eng Remand
Public Hearing
10:00 a.m. Thornton Conference Room
Wallowa County Courthouse**

MEMBERS PRESENT: CHAIR ROBERTS
COMMISSIONER TODD NASH
COMMISSIONER JOHN HILLOCK

STAFF PRESENT: SAMANTHA PEPPER, EXECUTIVE ASSISTANT

OTHERS PRESENT: PAIGE SULLY, COUNTY COUNSEL, RICHARD HOBBS,
BOBBI ATKINS, STIL COLEMAN, LAURA LEWIS,
TRENA HOOK JONE, CLARENEEN NORTON, DONNA
GOEBEL, RENAE BILBEN, STEVEN BILBEN, SUE
COLEMAN, KATE FENT, MICHAEL AND MONICA
ENG

10:00 a.m. – Chair Roberts opened the meeting and stated that this special session to deliberate and set findings for appeal 17-02 for LUBA hearing 2018-085. The board will not receive any evidence as the record is closed.

All commissioners stated that they will not recuse themselves for any financial or personal reasons.

All commissioners stated they had no significant ex parte contact with anyone involved since the last day of the last hearing.

Chair Roberts asks if anyone in the audience would like to challenge any commissioner on this matter and if anyone wishes to challenge the jurisdiction of the county on this matter.

Chair Roberts states that this matter is the remand of the appeal of Zone Permit#13-66. The statements regarding this being an appeal of a Conditional Use permit are mis-statements on the commissioner's part but an objection has been lodged by Mr. Hobbs on behalf of the Eng's which will be included in the record of this matter.

As set forth in the LUBA opinion, the county is required to reopen the record and

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afford the Engs an opportunity to respond to the email by Ed Minalia presented by Mr. Bilben. The County did so on September 3, 2019 and has received written material of the applicant's response.

Chair Roberts states that the County is to address Finding 14 and explain in more detail how they are defining a dwelling and what facts in the record form the basis of their decision on this issue. They will also address Finding 17 and whether that it is still valid in light of the evidence presented by the parties in response to the record being opened regarding the Ed Minalia Email.

The County shall address Finding 23 and explain our reasoning regarding the placement of a dwelling on Tax Lot 3300 in light of the conflicting evidence and including evidence related to the placement of the home on the County tax rolls and changes in tax laws regarding the same.

The County is required to identify in more detail why Template D was chosen to determine compliance with the template test and why it does not result in an unreasonable shift in the template in light of the flag portion of the tract.

The County shall articulate in detail in the order whether the future determination regarding compliance with the applicable wildlife standards will be subject to a public process.

Chair Roberts noted that per the LUBA remand ruling the Board opened the record and took evidence from parties wishing to respond to the Ed Minalia e-mail.

Chair Roberts explains that Finding 14 required more detail as to how the commission will define dwelling. Chair Roberts states that she felt they were using the term "dwelling" as defined in the Wallowa County Land Use Code section 1.065.40.040.

Commissioner Hillock and Nash agreed.

Chair Robert states Finding 17 shall be reviewed in light of the evidence presented by the Engs and others to refute Mr. Minalia's email. In Chair Roberts' review of the additional material, her opinion of the credibility of the e-mail evidence was not undermined and that much of the new material was already in the record. The additional material presented at the public hearing did not change her mind as to this finding.

Commissioner Nash and Commissioner Hillock agreed that no additional material presented on this matter changed their findings as set out in the earlier findings of fact.

Chair Roberts explains that they are required to address Finding 23 and explain the reasoning regarding this finding in light of the conflicting evidence presented to the addition of the dwelling on Tax Lot 300 on the County's tax rolls. She advised that after further review she could not reconcile the conflicting evidence and did not find that the evidence for either side convinced her fully. She did not find that this issue regarding the placement on the tax rolls weighed either in favor of, or in opposition

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to, the applicant's position.

Paige Sully requested clarification regarding the Board's position that they could not decide if there was a lawful dwelling or not was limited to the context of Finding 23 only.

Chair Roberts replies yes. There was not enough evidence to support Finding 23 as weighing in favor of the applicant.

Commissioner Hillock stated that his experience has been that new dwellings were not always added to the tax rolls in the year in which they were completed. He did not believe the evidence was compelling for either position on this issue.

Commissioner Nash was in agreement with Chair Robert's opinion on the issue of Finding 23.

The County is to explain Finding 5 and explain in more detail why they choose Template D and why using that template does not result in an unreasonable shift in center of the tract. This parcel includes a flag lot. In a template test submitted by the opponent of the application that flag lot was not included in the template. Chair Roberts believes that the whole property needs to be evaluated no matter the shape that it is in and that the template set out in D gave weight to the flag lot, but not an undue amount such that it was unreasonable. Template D is in line with at least two of the other templates offered. Once the flag lot was included in the template tests offered, most of the property on tax lot 300 is included in more than just Template D.

Commissioner Hillock states that all templates were relatively the same and still believes that Template D describes them the best.

Commissioner Nash pointed out that there was no established template test as required by Oregon Revised Statutes or Wallowa County Code. He further states that Template D was the best describing the center point of the parcel.

Chair Roberts explains that Template D was reasonable because it did not give too much nor too little weight to the flag lot in identifying a center point for the tract.

Paige Sully asked the commissioners to explain why they did not ask for a survey. Commissioner Roberts states that while two of the template tests not relied on by the Board resulted in a template line close to or on the property line of Tax Lot 3300, which would indicate a survey was needed, that was not the case with Template D. A significant portion of Tax Lot 300 was included in Template D, significant enough that the Board was confident in relying on the maps presented without the need to resort to a survey.

The Board clarified that the issuance of the zone permit will be conditioned on compliance with the wildlife standards of Section 16.025, which decision will be made in a proceeding where there is public participation as otherwise required by the Wallowa County Land Use Code.

Ms. Sully also asked what facts the Board relied on in coming to a conclusion that

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there was a dwelling on tax lot 3300 and was advised that it was due to the conclusion that there existed a kitchen and at least one other room.

Commissioner Nash moved to approve the changes discussed above to the Findings of Fact and Conclusions of Law previously adopted by the Board in Order 2018-085.

Commissioner Hillock seconded the motion.

The vote on the motion was 3 in favor.

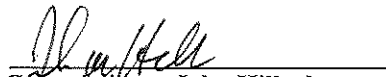
Adjournment: The official meeting ended at approximately 10:29 a.m.

Respectfully Submitted by:
Samantha Pepper, Executive Assistant

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Chair Susan Roberts


Commissioner Todd Nash


Commissioner John Hillock


ATTEST: Samantha Pepper, Executive Assistant