

BEFORE THE LAND USE HEARINGS OFFICER
CLACKAMAS COUNTY, OREGON

Regarding an Application for a Conditional Use
Permit for a Back-Up Well for the Sleepy
Hollow Water District.

Case File No: Z0031-22-C
(Sleepy Hollow Water District)

A. SUMMARY OF FINDINGS, HEARING, AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony and evidence at the March 17, 2022 public hearing about this application. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform due to the coronavirus, with the County providing an explanation for virtual participation. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the County's staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. At the hearing, County Planner Clay Glasgow discussed the staff review of this application for a conditional use permit. Mr. Glasgow provided relevant background information concerning the application, the County's review, and the County's recommendation of approval. Mr. Glasgow noted that the applicant is seeking a conditional use permit for installation of a new back-up well on site for the Sleepy Hollow Water District, to include adding a new back-up generator, and a small 8'x10' building to contain well, pump, preliminary filtration equipment and electrical panel. Mr. Glasgow reviewed the approval criteria for this application, discussing how the proposal meets or can meet all of the approval criteria for a conditional use permit. Mr. Glasgow noted that this proposal is for a back-up well to support the local community, and this proposal has community support. Mr. Glasgow stated that the County has received a couple of public comments in support of the proposal, and no opposition to this application.
3. The location of the subject property is 58830 E. Cabin Lane. This location is west of Brightwood, approximately ¼ mile north of Highway 26; between E. Sleepy Hollow Drive and E. Cabin Lane, west of E. Clubhouse Road. The legal description of the subject property is: T2S R6E, Section 22BD, Tax Lots 7100, 7300, 7400, 7500, 11201. The site of the proposal is within an approximately 3,098 square foot easement (about 0.20 acres) contained within the larger parcel. The zoning for the subject property is RRFF-5, Rural Residential Farm/Forest, with a comprehensive plan designation of rural. The larger site and area are in rural residential use. The site is within the service area for the Sleepy Hollow Water District, which provided preliminary statements of feasibility supporting the application. The site is within Hoodland Fire #74. The site is within the Mt. Hood Corridor and is within the inactive Mr. Hood Corridor Citizen's Planning Organization. No natural features are noted in the area proposed for use or on the larger parcel that is the subject property.

4. The applicant is Jeremy Tower, for the Sleepy Hollow Water District. Mr. Tower explained that the proposal is intended to aid the Sleepy Hollow Water District in continuing the supply of needed drinking water throughout emergencies or low water output from the current spring providing the supply to this local community. Mr. Tower pointed to recent wildfires raising concern with the water supply and the ability of the community to fight fires. Mr. Tower also pointed to the small size of the proposed control pump shed (a “Tuff Shed” that is 8 ft. X 10 ft.), noting that aesthetically it will not appear large or out of place. Mr. Tower noted that the setback off of Sleepy Hollow Drive allows for no disturbance of traffic or lighting. Mr. Tower stated that the applicant does not dispute the conditions of approval proposed by the County.
5. The Hearings Officer asked whether any party or member of the audience wanted an opportunity to provide additional evidence, arguments, or testimony, and no one requested this opportunity. The applicant affirmed that he wished to waive the period for final written argument. The hearings officer approved the application and closed the record.

B. FINDINGS AND DISCUSSION

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. This application is subject to the standards and criteria of Clackamas County Zoning and Development Ordinance (ZDO) Section 1203. This application is being processed as a Type III Permit, pursuant to Section 1307. A Type III Permit is quasi-judicial in nature, and involves land use actions governed by standards and approval criteria that require the use of discretion and judgment. The issues associated with the land use action may be complex and the impacts significant, and conditions of approval may be imposed to mitigate the impacts and ensure compliance with this Ordinance and the Comprehensive Plan. The Type III procedure is a quasi-judicial review process where the review authority receives testimony, reviews the application for conformance with the applicable standards and approval criteria, and issues a decision.

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 316, 1002, 1005, 1006, 1007, 1015, and 1203; and the Comprehensive Plan. Clackamas County Land Use and Zoning Staff reviewed these Sections of the ZDO in conjunction with this proposal and makes the following findings and conclusions, reviewed, adopted and/or modified by the Hearings Officer:

1. Background:

Applicant’s discussion of their proposal: “This project is intended to aid the Sleepy Hollow Water District in continuing the supply of needed drinking water throughout emergencies or low water output from the current spring supply. The impact of the small control pump shed is one of small proportion. Aesthetically and locally it will not appear large or out of place. The setback off of Sleepy Hollow Drive allows for no disturbance of traffic or lighting.”

2. **Site Description:** 58830 E. Cabin Lane as described earlier in this report. Site is relatively level with mix of timber and open areas. The area proposed for use is part of a group of platted subdivision lots in the RRF5 Zone. The larger site and area are in rural residential use, located just west of Brightwood, approximately one-quarter mile north of Highway 26.

3. **Fire:** Hoodland Fire #74

4. **Natural Features:** None noted in the area proposed for use, or on the larger property.
5. **Surrounding Conditions:** This small area of development is surrounded by platted subdivision lots, some with homes others vacant. The surrounding area is served by the Water District.
6. **Service Providers:**
 - A. Surface Water: Transportation Engineering
 - B. Water: applicant, Sleepy Hollow Water
 - C. Sewer: none
 - D. Fire Protection: Hoodland Fire #74
7. **Responses Requested:**
 - A. Department of Transportation and Development (DTD), Traffic Engineering (TE)
 - B. DTD, Building Division
 - C. Property Owners within 500 feet
9. **Responses Received:** No responses received as of the County's March 10, 2022 staff report.

PART 1. SUBMITTAL REQUIREMENTS – CONDITIONAL USE PERMIT

Subsection 1203.04 of the Zoning and Development Ordinance list the information that must be included in a complete application for a conditional use permit.

This application includes a completed land use application form, site plan, application fee and completed supplemental application addressing the criteria in Section 1203 of the ZDO. The application also includes a description of the proposed use, vicinity map and required preliminary Statement of Feasibility from Transportation Engineering, dated December 15, 2021. All the submittal requirements under Subsection 1203.04 are included in the application. The application was submitted January 24, 2022 and, after submittal of additional requested information was deemed complete February 4, 2022. The 150 day deadline for processing this application is July 3, 2022.

The Hearings Officer concurs with staff that the submittal requirements of Section 1203.04 are met.

PART 2. CONDITIONAL USE PERMIT

1. **Subsection 1203.01** of the Zoning and Development Ordinance (ZDO) lists six (6) criteria that must be satisfied in order to approve this Conditional Use.
 - A. **Section 1203.01(A):** *The use is listed as a conditional use in the zoning district in which the subject property is located.*

Rural Residential Farm Forest Zone: Section 316 of the ZDO implements the underlying RRF-5 Residential Zone. At Table 316-1, Public Utility Facilities are listed as a conditional

use (with limits.) The applicant is proposing back-up well and generator, pump and an 8' X 10' building to house equipment. This falls into category Public Utility Facilities.

The Hearings Officer concurs with staff that this criterion is satisfied.

B. **Section 1203.01(B):** *The characteristics of the subject property are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.*

1. Size: The proposed site is part of a group of platted lots within the Sleepy Hollow Subdivision, further described as several different tax lots. Area proposed for development is less than 2,000 square feet, easily provided for here.
2. Shape: property shape is generally rectangular. Combined with size, this does not present any limitations to the proposed use.
3. Topography: The proposed development site is essentially level. Not a limiting factor.
4. Location: The subject property is located within the area proposed to be served by the use.
5. Improvements: the subject property has a home in the northern portion, otherwise it is vacant.
6. Natural Features:
 - a. Floodplain: none identified at location of proposal.
 - b. Geologic Hazards: DOGAMI maps do not identify any geologic hazards on or near the development site.
 - c. River and Streams Conservation Areas: The subject property does not contain any protected streams identified as River and Stream Conservation areas.
7. Summary: The size, shape, topographic and location characteristics of the property are suitable to accommodate the proposed use. As proposed, the use will not interfere with any identified natural feature.

The Hearings Officer concurs with staff that this criterion is met.

C. **Section 1203.01(C):** *The proposed use is consistent with Subsection 1007.09, and safety of the transportation system is adequate to serve the proposed use.*

1. Subsection 1007.07: Transportation Facilities Concurrency
 - a. Subsection 1007.07(A): *“The purpose of Subsection 1007.07 is to ensure that transportation infrastructure is provided concurrent with the new development it is*

required to serve or, within a reasonable period of time following the approval of new development.”

This proposal is for new back-up well for Water District, to include adding small building: 8’X10’ to contain well, pump, preliminary filtration equipment and electrical panel. New back-up generator (outside.) The proposed facility will be accessed from E. Sleepy Hollow Drive.

Based on insignificant transportation needs of the use (only occasional visit for maintenance/repair this proposal is able to comply with the requirements of ZDO subsection 1203.03 C.

- b. Subsection 1007.07(B): *Shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.” Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner.”*

This proposal involves a conditional use; therefore, this subsection applies. Based on insignificant transportation needs of the use (only occasional visit for maintenance/repair this proposal is able to comply with the requirements of ZDO subsection 1203.03 C.

2 Safety:

- a. Subsection 1007.02(D): *“Developments shall comply with the intersection sight distance and roadside clear zone standards of the Clackamas County Roadway Standards. In addition:*
- i. *No planting, signing, or fencing shall be permitted which restricts motorists’ vision; and*
 - ii. *Curbside parking may be restricted along streets with visibility problems for motorists, pedestrians, and/or bicyclists as deemed appropriate by the Department of Transportation and Development.”*

The site is access off E. Sleepy Hollow Drive, a low volume residential local street. Off-street parking is shown as being provided for the use. The facility is unoccupied, with the only vehicle traffic coming from maintenance and repair visits. Based on this, the proposal is able to comply with the requirements of ZDO subsection 1203.03.

The Hearings Officer concurs with staff that this criterion is satisfied.

- D. Section 1203.01(D): *“The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.”*

1. The subject property is within an area of rural residential use in the Highway 26 corridor, west of Brightwood. Use in this area is generally rural residential away from the

Highway, with scattered commercial uses along Highway 26 particularly further east. The site proposed for development is within the rural residential area, and will serve that area. A single (small) building is involved, to house the pump and associate equipment, with an outside back up generator for use if power goes out.

2. This criterion does not require the use to have no impacts, but instead the impacts must not substantially limit, impair or preclude the use of surrounding properties for the allowed primary uses. Allowed primary uses the RRFF-5 zone are listed at Section 316. These uses are generally rural residential, along with timber management and farm activities.
3. The potential impacts on the surrounding area/uses include noise, traffic and lighting. Applicant discusses these potential issues. The proposed use would be consistent with existing uses in the area, and in fact is a necessary support use, e.g. source of water. The facility is to be unoccupied, with vehicle traffic limited to that of maintenance and repair personnel. Lighting for the use will be limited to a single light at the door to the building itself and will be properly shielded. The building design is meant to blend in with the wooded surroundings. Applicant states there will be no noise or light detectable from adjacent or surrounding properties.

Summary: Planning and Zoning Staff does not believe traffic, noise, lighting or other impacts resulting from the proposed use will substantially limit, impair or preclude the use of surrounding properties for primary uses in those zones.

The Hearings Officer concurs with staff that these criteria are met.

E. **Section 1203.01(E):** *“The proposal satisfies the goals and policies of the Comprehensive Plan that apply to the proposed use.”*

1. The subject property is designated Rural on the Comprehensive Plan Map (Map 4-7b, Mt Hood Corridor Land Use Plan.)

The applicant only generally addresses the Comprehensive Plan including Chapter Chapter 4 Rural element, etc. Staff accepts that discussion, with the following additions:

a. Chapter 7, Public Facilities and Services:

Those staff finds most applicable here include - *Goals:* “Provide for the location and development of drinking water facilities to support existing and future land development; Protect quantity and quality of drinking water supplies.” *Policies:* 14.0 “Require all water purveyors to design development and extension of water facilities at levels consistent with the Land use element of the Comprehensive Plan.”

b. Chapter 4, Land Use:

Subject property is designated Rural by the Plan.

This is a support use for rural uses, specifically it is a water source for a rural residential area. Staff is able to find that, use proposed here will further applicable

policies of this, and other sections of the Plan.

The Hearings Officer concurs with staff that these criteria are satisfied.

- F. **Section 1203.01(F):** *The proposed use complies with any applicable requirements of the zoning district and overlay zoning district(s) in which the subject property is located, Section 800, and Section 1000.* Underlying Zone is RRF-5, Rural Residential Farm Forest. Subject property does not involve “overlay zoning districts” as meant here. Staff has reviewed information from the applicant and potentially applicable Code sections and arrives at the following:

These Code sections from 1000 appear to apply to this proposal:

1. **Section 1005, Sustainable Site and Building Design:** Applicant provides detailed response. Staff refers to applicant’s discussion here, and makes the following findings.

a. Section 1005.04, Building Design:

1. Section 1005.04(E)(3), exterior building materials: *Walls shall be surfaced with brick, tile, masonry, stucco, stone or synthetic equivalent, pre-cast masonry, gypsum reinforced fiber concreted, wood lap siding, architecturally treated concrete, glass, wood or a combination of these or other high-image materials. Metal may be approved as an exterior building material for specific high-image surfaces, canopies, awnings, doors, screening of roof-mounted fixtures, or other architectural features.*

The building as proposed has footprint of 80 square feet. Essentially a garden shed, it will be of muted color with wood siding - this small building is meant to blend in with its surroundings as a security measure if nothing else. It will be also be screened by existing vegetation.

Based on small scale of project along with chosen building materials and existing buffer vegetation, staff feels applicable portions of Section 1005.04 are met here.
The Hearings Officer concurs with staff that these criteria is met.

b. Section 1005.05, Outdoor Lighting:

1. Section 1005.05(A), Outdoor lighting devices:

Lighting as proposed is limited to illumination at the door, shielded, downward directed and compatible with use.

The Hearings Officer concurs with staff that this criterion is met.

c. Section 1005.03, General Site Design:

Applicant provides discussion in the submitted materials. Total building footprint at 80 square feet and total disturbance area is only slightly larger. The development

will be largely shielded and buffered by mature trees and other vegetation. Staff believes this proposal meets intent here.

The Hearings Officer concurs with staff that this criterion is met.

2. **Section 1006, Water Supply, Sanitary Sewer, Surface Water; and Utilities Concurrency:**

This Section of the ZDO sets forth the standards, requirements and considerations that pertain to utility lines and facilities.

a. Section 1006.05, General Standards:

This proposal deals with water supply for a residential service district.

The Hearings Officer concurs with staff that this criterion is met.

b. Section 1006.08 - Surface Water Management Standards:

i. *“All developments shall provide for positive drainage and adequate conveyance of storm and surface water runoff from roofs, footings, foundations, and other impervious or near-impervious surfaces to an appropriate discharge point and shall:*

1. *Comply with the requirements of any special districts with surface water management regulatory jurisdiction; or*
2. *The requirements of Section 1008 and the County Roadway Standards in areas not under the jurisdiction of a surface water management regulatory authority.*

Transportation Engineering is the surface water authority here. That Department signed a Preliminary Statement of Feasibility, dated December 15, 2022.

The Hearings Officer concurs with staff that the standards of Section 1006 are met.

3. **Section 1007, Roads Connectivity:**

A. Section 1007.03 – General Provisions:

- a. *The location, alignment, design, grade, width, and capacity of all roads shall be planned, coordinated, and controlled by the Department of Transportation and Development and shall conform to Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards. Where conflicts occur between Section 1007, the Comprehensive Plan, and the Clackamas County Roadway Standards, the Comprehensive Plan shall control.*
- b. *Right-of-way dedications and improvements shall be required of all new developments, including partitions, subdivisions, multifamily dwellings, two- and three-family dwellings, condominiums, single-family dwellings, and commercial,*

industrial, and institutional uses, as deemed necessary by the Department of Transportation and Development and consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.

The applicant has proposed back-up well for Sleepy Hollow Water District, to include adding small building: 8’X10’ to contain well, pump, preliminary filtration equipment and electrical panel. New back-up generator (outside.) The proposed facility will be accessed from Sleepy Hollow Drive. The proposed development is subject to the provisions of *Clackamas County Zoning and Development Ordinance (ZDO)* section 1007 pertaining to roads and connectivity, Section 1015 pertaining to parking and loading, and Clackamas County Roadway Standards, Chapter 4 pertaining to storm water management.

Engineering Staff did not submit comments or suggest conditions when notified of the proposal. **The Hearings Officer concurs with staff that a condition of approval is warranted, ensuring requirements of that Division are satisfied.**

4. Section 1015, Parking and Loading:

A. Section 1015.04 Automobile Parking Area Standards:

The project site is located outside the Portland Metro Urban Growth Boundary (UGB).

The applicant is required to provide adequate on-site circulation for all vehicles anticipated to use the parking and maneuvering areas.

Vehicle parking spaces shall meet minimum ZDO Section 1015 dimensional requirements. Table 1015-1 lists the minimum a number of parking spaces by use category. The proposed use of un-manned utility facility is not included in the Table. Maintenance/repair visits will be the only traffic generators. With room for one vehicle parking space, staff is able to find the intent of Section 1015 is met as proposed.

The Hearings Officer concurs with staff that the standards of Section 1015 are met.

Summary: The applicant can comply with applicable sections listed under Section 1000.

PART 3. OTHER DEVELOPMENT STANDARDS

1. Other Applicable Sections of the ZDO: Other standards and Sections of the ZDO applicable to this application are addressed below.

A. Section 316, Rural Residential Farm Forest

At Table 316-1, “Public Utility Facility” is listed as a potential conditional use in the RR Zone. Footnote #10 limits certain accessory uses, none of which are planned here.

The Hearings Officer concurs with staff that applicable criteria from Section 316 are met with this proposal.

SECTION 2 – CONDITIONS OF APPROVAL

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis. The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. It shall be the responsibility of the property owner(s) to comply with the limitation of any approval resulting from the decision described herein.

The Clackamas County Land Use and Zoning staff recommends approval of this application for Conditional Use Permit subject to the following conditions, reviewed, adopted and/or modified by the Hearings Officer:

II. General Conditions:

- 1) Approval of this land use permit is based on the submitted written narrative and plan(s), dated January 24, 2022 and deemed complete February 4, 2022. No work shall occur under this permit other than which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.
- 2) The applicant is advised to take part in a Post Land Use Transition meeting. County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting please contact Wendi Coryell, Clackamas County at (503) 742-4657.
- 3) **Prior to the issuance of building permits**, the applicant shall submit a statement of use to Wendi Coryell in the Clackamas County Engineering Division. Wendi Coryell may be contacted at (503) 742-4657 or wendicor@co.clackamas.or.us . The statement of use is used to calculate the Transportation System Development Charge. A Transportation System Development Charge (TSDC) is included in the final calculation of the building permit fees for new instructional projects; this includes additions and tenant improvements that increase the number of daily trips to the site.
- 4) If approved, the conditional use is valid for ten (10) years from the date of the final written decision. If the County’s final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this period, the approval shall be implemented, or the approval will become void. “Implemented” means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, “implemented” means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A “major development permit” is:
 - a. A building permit for a new primary structure that was part of the conditional use approval; or

b. A permit issued by the County Engineering Division for parking lot or road improvements required by the conditional use approval.

6) This Conditional Use approval is granted subject to the above and below stated conditions. Failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.

III. Planning and Zoning Conditions: Clay Glasgow, (503) 742-4520, clayg@clackamas.us

- 1) Development of the subject property is subject to the provisions of ZDO Sec.1203 and those other relevant codes and ordinances adopted by the Board of County Commissioners pursuant to subsec. 1001.03 of the ZDO, including, but not limited to, the County Roadway Standards, County Excavation and Grading Ordinance, and Oregon Structural Specialty Code, etc.
- 2) Outdoor lighting shall be located and designed, hooded and screened so that it does not shine up, or onto adjacent properties or right-of-ways.

IV. Building Code Division Conditions: Richard Carlson, (503) 742-4769, richardcar@co.clackamas.or.us

- 1) All construction shall comply with current Oregon Structural Specialty Code and any other relevant codes. All required building permits shall be obtained and received final occupancy approval.
- 2) All required development permits (grading and erosion control, etc.) shall be obtained prior to any construction.

V. Transportation Engineering Conditions: Ken Kent, (503) 742-4763

- 1) Applicant to satisfy requirements of Transportation Engineering

C. DECISION

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES application Z0031-22-C, subject to conditions of approval.

Dated: March 21, 2022



Carl D. Cox
Clackamas County Hearings Officer

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APPEAL RIGHTS

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision is "final" for purposes of a LUBA appeal as of the date of the decision appearing by my signature.