



*Land of Cheese, Trees and Ocean Breeze*

**APPEAL OF THE DEPARTMENT OF COMMUNITY DEVELOPMENT’S DECISION TO APPROVE  
CONDITIONAL USE REQUEST 851-17-000157-PLNG FOR PLACEMENT OF A RECREATIONAL  
VEHICLE IN THE SMALL FARM WOODLOT 20 ACRE ZONE**

**Appeal # 851-17-000323-PLNG: Fauth**

**Staff Report Date: August 3, 2017 (Exhibit 2)**  
**Planning Commission Hearing Date: August 10, 2017**

**Report Prepared by: Hilary Foote, Associate Planner**

**I. GENERAL INFORMATION:**

- Request:** An appeal to the Planning Commission of the Community Development Department’s decision to Approve with Conditions a Conditional Use request (851-17-000157-PLNG) for the placement of a recreational vehicle as a dwelling (Exhibit B),
- Location:** A private road approximately ½ mile off of East Beaver Creek Road and designated as Tax Lot 1600 of Section 17D, Township 3 South, Range 9 West of the Willamette Meridian, Tillamook County, Oregon.
- Zone:** Small Farm Woodlot (SFW-10) Zone
- Appellant:** Fauna June Fauth, 21690 E. Beaver Creek Road, Cloverdale, OR 97112
- Applicant/  
Property  
Owner:** Cris Orlando, 21550 E. Beaver Creek Road, Cloverdale, OR 97112

**II. SUMMARY OF PROCEEDING:**

The Application for 851-17-000157-PLNG was deemed complete on April 4, 2017. Notice of the request was originally mailed to property owners and agencies on April 17, 2017. No comments were received.

A decision to approve the request was rendered on May 12, 2017. Due to a Scrivener's error, the request was re-noticed on May 25, 2017. The Conditional Use request was subsequently approved on June 22, 2017. The Staff Report for 851-17-000157-PLNG dated June 22, 2017 is provided here as 'Exhibit 2'.

A Notice of Appeal was filed by the appellant on July 3, 2017, within the twelve day appeal period, and is included here as 'Exhibit 1'. Notice of the Appeal Hearing was mailed to all landowners within 250 feet of the subject property, interested parties and impacted agencies on July 11, 2017. Notice of the Appeal Hearing was printed in the Tillamook Headlight Herald on July 19, 2017. Public Comments received from Frank Fauth, Linda Werner and David Wells and are included here as 'Exhibit 5'.

Staff notes that many of the comments received question whether or not the County should allow the residential use of recreational vehicles and whether the standards applied to their use are sufficient. That is a wider question that would be appropriately considered in a public stakeholder engagement process and perhaps in consideration of an Ordinance Amendment, but is outside of the scope of this review process.

### III. APPEAL:

**Objection 1:** *The decision violates section 3.008(3). The applicant proposes to use a recreational vehicle as a dwelling, not during construction or substantial improvement of a use for which a building or placement permit has been issued. A recreational vehicle is not a "dwelling." Rather, a recreational vehicle is to be used only for vacation, emergency or recreational use. See section 11.030.*

**Findings:** TCLUO 3.008(3) lists uses that are allowed in the SFW-10 zone subject to conditional use review and approval. TCLUO 3.008(3)(r) lists 'recreational vehicles' as a use that is allowed subject to conditional use review and approval and subject to the applicable supplementary regulations contained in ordinance. The appellant references above a different use which is allowed outright in the SWF-10 zone as described in TCLUO 3.008(2)(f) as a 'recreational vehicle used only during the construction or substantial improvement of a use for which a building or placement permit has been issued'. These are two different and distinct uses, one of which is allowed outright (TCLUO 3.008(2)(f)) and the other which is subject to conditional use review (TCLUO 3.008(3)(r)). Staff finds that the proposed use of a recreational vehicle in the SFW-10 zone is listed in TCLUO 3.008(3)(r), 'Uses Permitted Conditionally' and is subject to conditional use review.

It is not the County's intent to classify or to re-define a recreational vehicle as a 'dwelling'. Tillamook County Land Use Ordinances do allow, under certain circumstances, for residential use to occur in a recreational vehicle and for a recreational vehicle to be occupied as a dwelling.

TCLUO 11.030 defines 'recreational vehicle' as 'a portable temporary dwelling unit, with a gross floor area not exceeding 400 square feet in the set up mode, which is intended for vacation, emergency or recreational use, but not for permanent residential use, unless located in a recreational vehicle or mobile/manufactured dwelling park'. TCLUO 11.030 defines 'dwelling unit' as 'one or more rooms occupied, designed or intended for occupancy as separate living quarters, and containing three or more of the following: refrigeration; cooking facility (including cooking stove, hot plate, range hood, microwave oven, or similar facility); dishwashing machine ; sink intended for meal preparation (not including a wet bar); garbage disposal; toilet'. Staff notes that this definition refers to the intent of the use relative to location, but does not definitively limit the scope of use of the vehicle. In the regulation of land use activity, the Department relies on those uses and standards listed in the ordinances associated with the underlying zone, other applicable ordinance standards and criteria. TCLUO 11.020 states that

where meanings defined in in Article 11 appear to be inapplicable, the context in which a term is used will indicate its intended meaning, and that intent shall control. When reviewed in the context of the uses allowed under Section 3.008(3)(r), the County's intent to conditionally permit an RV in the SFW-10 should prevail over the meaning of RV as provided in the definition section. In this case, TCLUO 3.008(3)(r) lists '*recreational vehicles*' as a use that is allowed subject to conditional use review and approval and subject to the applicable supplementary regulations contained in ordinance - including those contained in TCLUO 5.010, 'Mobile Home, Manufactured Home and Recreational Vehicle Siting Criteria'.

In addition to recreational vehicle or mobile/manufactured dwelling parks, Tillamook County Land Use Ordinances do allow for the residential placement of a recreational vehicle in other locations in certain zones subject to standards that address public health and safety concerns. Those standards are contained in TCLUO 5.010, 'Mobile Home, Manufactured Home and Recreational Vehicle Siting Criteria' and are discussed at length in the Staff Report (Exhibit 2). This is consistent with ORS 446.125 which states '*A person may occupy a manufactured dwelling or a camping vehicle on private land with the consent of the owner of the land if: (1) The lot, tract or parcel of land upon which the manufactured dwelling or camping vehicle is situated has an area adequate to provide safe, approved water supply and sewage disposal facilities and is not in conflict with ORS 446.310 (9). (2) The person complies with all applicable standards of sanitation, water, plumbing and electrical and sewerage installations prescribed by the laws of this state and the rules issued thereunder, or by local authorities.*'

TCLUO Article 5, 'Special Use Standards and Exceptions' distinguishes between the recreational use of RVs, the temporary use of RVs during a health hardship or during construction, and the residential use of recreational vehicles. TCLUO Article 5 also contains different sets of standards applicable to those different recreational vehicle uses:

- TCLUO 5.010, 'Mobile Home/Manufactured Home/Recreation Vehicle Siting Criteria' addresses the standards required to be met for residential use of a recreational vehicle and clearly distinguishes between the general residential use of a recreational vehicle and the temporary use of a recreational vehicle during construction.
- TCLUO 5.020, 'Mobile and Manufactured Home Park Standards' contains standards for the design of mobile home parks and how units are to be sited within them.
- TCLUO 5.030, 'Recreational Campground Standards' contains standards for the design and use of campgrounds and how recreational vehicle sites are to be designed and incorporated into the layout.
- TCLUO 5.040, 'Primitive Campground Standards' contains standards for the design and use of campgrounds and how recreational vehicle sites are to be designed and incorporated into the layout.
- TCLUO 5.050, 'General Exception for the Location of Recreational Vehicles and Mobile Homes' contains criteria for reviewing applications for subdivisions intended for recreational vehicles used as dwellings and lists six areas where the use of recreational vehicles as dwellings is allowed outright subject to applicable development standards.
- TCLUO 5.070, 'Temporary Uses' addresses the use of recreational vehicles as temporary dwellings during construction of public facility improvements and for guests of a resident occupying a single family dwelling.

A copy of Article 5 is included here as Exhibit 3. Staff finds that the Tillamook County Land Use Ordinances contemplate several ways that recreational vehicles may be used and provides different standards for those different uses. Staff finds that the Tillamook County Land Use Ordinances allow for the residential use of recreational vehicles in recreational vehicle parks, mobile/manufactured home parks, recreational vehicle subdivisions, as caretaker/watchman dwellings in association with commercial or industrial uses, and as dwellings located on individual properties where allowed by the underlying zone subject to applicable standards such as in the request which is the subject of 851-17-000157-PLNG.

Staff finds that the placement of a recreational vehicle and its residential use as a dwelling are allowed subject to conditional use review and approval and subject to the applicable supplementary regulations contained in ordinance.

**Objection 2:** *The decision violates section 3.008(4). The placement of a recreational vehicle is not "development" under any common understanding of the term. Furthermore, as noted above, a recreational vehicle is not a residence, nor is it a structure.*

**Findings:** Section 3.008(4) lists standards that apply to land divisions and development in the SFW-10 zone. TCLUO 11.030 defines 'development' as '*Any human-caused change to improved or unimproved land, including, but not limited to, buildings or other structures; mining; dredging; filling; grading; paving; excavation; drilling operations; construction of roads or ditches; earth-moving; or construction of dikes, berms or levees. It does not include ordinary farm or forest practices such as plowing, disking, harrowing, cutting, or planting, or other similar activities for the cultivation or preparation of the soil for farm or forest production.*' Staff finds that the placement of the recreational vehicle along with the required accompanying systems is a human-caused change to the land and meets the above definition of 'development' and that the proposed use is subject to the standards outlined in 3.008(4).

**Objection 3:** *The decision violates section 5.010. There has been no demonstration that the proposed use is a dwelling, manufactured dwelling, or that it complies with the uniform building code.*

**Findings:** TCLUO Section 5.010, 'Mobile Home, Manufactured Home and Recreational Vehicle Siting Criteria' provides a set of standards to be applied when reviewing applications for recreational vehicle placement, mobile home placement or manufactured home placement (Exhibit 3). Applicant is proposing to site a recreational vehicle and Staff finds that these standards are applicable to the proposal. Conformance of the proposal with these standards is addressed in the Staff Report (Exhibit 2). Conformance with uniform building code is not the subject of land use review. TCLUO Section 5.010 only addresses uniform building code in the following circumstances:

- TCLUO 5.010(2) states that '*building permits are required for construction of a foundation or any site-constructed buildings or structures, if one is required by the Uniform Building Code as adopted by the County*'. Staff finds that applicant has not proposed to construct a foundation or any site-constructed buildings or structures which require a building permit.
- TCLUO 5.010(8) states '*additions or alterations may be attached to a mobile or manufactured home, provided that such additions are structurally compatible with the mobile and manufactured home, and comply with other requirements of this Ordinance, the Uniform Building Code, and State regulations.*' Staff finds that applicant is not proposing any additions or alterations to a mobile or manufactured home.
- TCLUO 5.010(1) states '*An application for mobile home, manufactured home or recreational vehicle placement shall be obtained from, and approved by, the Department prior to the placement of a mobile home, manufactured home or recreational vehicle on any lot within the County's jurisdiction. Plans showing the proposed location of the unit shall accompany the application. No permit shall be considered approved until compliance with all applicable sanitation, building, planning, and public works requirements can be demonstrated, and such demonstration is acknowledged by the signatures of appropriate County officials.*' Applicant is required to obtain a Zoning Permit prior to placement of the recreational vehicle as a dwelling. Demonstration of compliance with all applicable sanitation, building, planning, and public works

requirements is typically required of any applicant at the time of applying for a Zoning Permit. Those items required at the time of applying for Zoning Permit approval are listed in the Conditions of approval for 851-17-000157-PLNG in the Staff Report (Exhibit 2).

**Objection 4:** *The decision violates 6.040. As noted above, a recreational vehicle is not a permanent dwelling.*

**Findings:** TCLUO 6.040 describes the conditional use review criteria to be considered in evaluating an application for a use permitted conditionally in the underlying zone. TCLUO 3.008(3)(r) lists 'recreational vehicles' as a use that is allowed subject to conditional use review and approval. Staff finds that the Applicant's request to site a recreational vehicle on the property is subject to conditional use review. The Staff Report in 'Exhibit 2' contains a discussion of the proposals conformance with the Conditional Use Review Criteria.

**Objection 5:** *The decision violates section 6.040(1)-(4), (6). The use is not consistent with goals 3 or 4. Neither use is consistent with goals 3 or 4. Neither goals 3 or 4 allow for recreational vehicles to be placed as dwellings. The parcel is not suitable for the proposed use because a recreational vehicle is not a permanent dwelling. The fact that the County has a history of permitting recreational vehicles as dwellings does not mean that this is a lawful practice. Rather, it means that the County has been engaged in an unlawful practice.*

**Findings:** TCLUO 6.040 describes the conditional use review criteria to be considered in evaluating an application for a use permitted conditionally in the underlying zone. TCLUO 3.008(3)(r) lists 'recreational vehicles' as a use that is allowed subject to conditional use review and approval. Staff finds that the Applicant's request to site a recreational vehicle on the property is subject to conditional use review and satisfaction of the criteria described in TCLUO 6.040. The Staff Report contains a discussion of proposals conformance with the Conditional Use Review Criteria (Exhibit 2).

The Small farm Woodlot 10 (SFW-10) Acre zone is an exception zone and not a resource zone. As such, a goal exception is not required. As noted in Section 4.1 of the Goal 3 Element of the Tillamook County Comprehensive Plan, the County's commercial agricultural land has been placed in the Farm Zone (F-1) and the Small Farm Woodlot 20-Acres Zone (SFW-20). Section 2.3 of the Goal 2 Element of the Tillamook County Comprehensive Plan categorizes lands that are to be considered to be protected resource lands and those suitable for rural development and urban development and includes the Small Farm Woodlot 10 Acre as a zoning designation suitable for rural development.

**Objection 6:** *The applicant does not have a viable septic permit. The only one in the record expired on its face in September 2016, 365 days after issuance in September 2015, as no construction occurred as required. It also applies to a property no longer owned by the Orlandos.*

**Findings:** Exhibit 4 to this report contains materials provided by the County's Environmental Program Manager, Chris Chiola including approved septic site evaluation, installation permit and inspection report for the subject property. These approvals are typically required at the time of applying for Zoning Permit approval.

**Objection 7:** *The conditions of approval are not clear and objective. The definition of "dwelling" in conditions of approval is ambiguous given that a dwelling can either be temporary or permanent.*

**Findings:** Two of the Conditions of Approval contain the word 'dwelling'. Condition of Approval 2 requires that the recreational vehicle not be occupied until Zoning Permits have been approved and any Conditions of Approval associated with the Zoning Permit has been satisfied. Condition of Approval 5 requires that a demonstration of water service to the dwelling be provided at the time of applying for Zoning and Building Permits. These are standard Conditions of Approval that have been applied to almost all land use approvals involving a dwelling that the Department has issued in the recent past. The Department has not had any issues with these Conditions of Approval to date.

**Objection 8:** *A recreational vehicle cannot be a permanent dwelling. Furthermore, what is meant by a "storage building" is not clear and objective. In addition, what is meant by "screened by existing vegetation and topography from adjacent properties and roads" is not clear and objective.*

**Findings:** Conditions of Approval 8 and 10 are standards required by TCLUO Sections 5.010(6), 'A storage building of at least sixty-four (64) square feet that is structurally compatible with the recreational vehicle shall be constructed within ninety days following placement of the unit' and 3.008(4)(3)(f), 'recreation vehicles shall be sited in such a way as to be screened by existing vegetation and topography from adjacent properties and roads'. The wording of these Conditions of Approval is copied directly from ordinance. The applicant would be required to demonstrate compliance with these standards at the time of applying for a Zoning permit even if they were not included as Conditions of Approval.

**Objection 9:** *A septic permit must be approved for only that portion of the property that has the least productive soils.*

**Findings:** Septic permits are issued by the County's Environmental Program Manager. There are no ordinance requirements in the SFW-10 zone that the septic system be sited on the least productive soils. As noted above, the SFW-10 zone is not a resource zone.

**Objection 10:** *The decision is inconsistent with statute. ORS. 215.283(L) allows only for a recreational vehicle on EFU land in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. This is not the case here.*

**Findings:** The subject property is not located on land zoned for Exclusive Farm Use (EFU).

**Objections 11 & 12:** *The decision violates 10.010(2)(b), which requires that "[n]o development shall occur without first obtaining the required permit(s) pursuant to the provisions in this chapter." The applicant has been residing at the current location since at least January 2017.*

*The applicant has unresolved violations and stop work orders, and should not be permitted to continue with this application in light of such infractions.*

**Findings:** Mr. Orlando is working with the Community Development Department to acquire the permits required to site a recreational vehicle on his property. As noted in the Staff Report in 'Exhibit 2', the previous enforcement action against Mr. Orlando was closed in January 2017. Nothing in County Ordinance or State Statute allow the County to prejudice or preference an application under consideration based on previous enforcement actions against an applicant or property owner, their character or socio-economic status. Consideration of an application for a conditional use request is solely based on satisfaction of the review criteria which are discussed in the Staff Report (Exhibit 2). Land use violations are addressed under the procedures described in Tillamook County Ordinance #35, 'Code Enforcement Ordinance'. When appropriate, the Community Development Department's preferred course of action to

resolving complaints and enforcement actions is to work with land owners to obtain the required permits and approvals necessary for the use. In the event a landowner is uncooperative the County may follow those proceedings outlined in Ordinance #35 or may elect to enforce the provision of its ordinances by any other available legal method, including those specifically mentioned in ORS 203.065 and ORS 215.185.

**VI. EXHIBITS**

All Exhibits referred to herein are, by this reference, made a part hereof:

1. Appellants Submittal
2. Staff Report and associated Exhibits for 851-17-000157-PLNG
3. TCLUO Article 5, 'Special Use Standards and Exceptions'
4. Tillamook County Environmental Program Manager Submittal
5. Additional Public Comments