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IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF LINCOLN

LINCOLN COUNTY,)	Case No.
)	
Plaintiff,)	COMPLAINT
)	Declaratory Judgment
LINDA S. HETZLER and)	Injunctive Relief
THOMAS LARRY SMITH,)	
)	ORS filing fee: (waived)
Defendants.)	
)	

1.

At all times material to this action, Lincoln County has been a governmental body within the State of Oregon and has authority and responsibility to enforce State of Oregon and Lincoln County Code regarding land use laws pursuant to ORS 215.185 and violations of Lincoln County Code pursuant to Lincoln County Code Section 10.200 and Section 10.400 et.seq.

2.

At all times material to this Action, Linda S. Hetzler and Thomas Larry Thomas were individuals and residents of Lincoln County, Oregon.

3.

Since on or about September 21, 2021, Defendants were in title to real property situated in Lincoln County pursuant to a deed, a copy of which deed is attached and incorporated as Exhibit 1 (“subject property”).

1 4.

2 The subject property is zoned pursuant to the adopted zoning ordinance of Lincoln
3 County as timber conservation (“TC”). Pursuant to that zoning, there are limited
4 circumstances in which a single dwelling may be placed on the subject property. On March
5 13, 1995, one of Defendant’s predecessors in interest was granted a conditional use permit to
6 put a single dwelling on the southern parcel identified in Exhibit A as Parcel 2 of Exhibit 1.
7 (Conditional Use Permit).

8 5.

9 Following the conditional use permit approval in 1995, the then property owner
10 obtained a building permit to install a manufactured home and garage, and such installation
11 was duly inspected and approved by Lincoln County and considered the one lawful dwelling
12 allowed on the subject property as zoned.

13 6.

14 At or about the time of installing the manufactured home, the then property owner
15 obtained a County approved septic system designed to accommodate a three bedroom
16 dwelling.

17 7.

18 In or around November 2022, Defendants removed the manufactured home due to it’s
19 condition, leaving the garage.

20 8.

21 On or about March 14, 2023, agents of Lincoln County made a site visit (“site visit”)
22 to Defendant’s property and discovered that Defendants had built four yurts on the property
23 in which people were living. In addition to the yurts, at least two recreational vehicles were
24 on the property.

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9.

All the yurts and recreational vehicles were observed at the site visit to have electricity connected to them.

10.

At the site visit the County employees observed that the yurts and two recreational vehicles were also connected to the three bedroom septic system installed for the former manufactured home.

11.

At the time of the site visit the yurts and recreational vehicles met Lincoln County Code’s definition of a “dwelling unit” as set out in Lincoln County Code section 1.1115(29) and each were a “single family dwelling as defined under Lincoln County Code section 1.1115(29)(a).

12.

Pursuant to Oregon law (OAR 918-309-0000 et.seq.; ORS 479.550 and Lincoln County Code 3.020) a permit and post-installation inspection is required for electrical connections to dwellings.

13

Defendants did not apply for permits for the electrical work they installed, thus no inspection was made.

14

Pursuant to Oregon law (ORS 454.655) a permit and post-installation inspection is required to connect to or alter an existing approved septic system in the way Defendants did in connecting it to the yurts and RV’s.

15.

1 Defendants did not apply for a septic permit for the septic work for the four yurts nor
2 for the RVs that existed at the time of the County site visit, thus no inspection was made.

3 16.

4 The policy for requiring permits and post-installation inspection is for the health and
5 safety of anyone living on the property and the public.

6 17.

7 In 2023 Defendants made an application to Lincoln County for a septic permit to
8 allow a new yurt (Defendants fifth yurt) to be connected to the original three bedroom septic
9 system. The septic permit request was denied by the County for reasons that (1) the
10 calculated load on the septic would exceed that permitted by law and (2) because the
11 property had more than one dwelling meant no new permit could be allowed until the
12 violations of zoning and violation of Defendants conditional use permit had been corrected.

13 18.

14 On information and belief, Defendants have erected a fifth yurt dwelling since the site
15 visit and have begun building on Parcel 1 of Exhibit 1.

16 19.

17 Defendants placing more than one dwelling unit on the subject property is in
18 violation of Lincoln County Zoning Code Section 1.1375, the conditional use permit and
19 ORS 215.185 as well as a violation of county and state law/rules.

20 20.

21 Plaintiff has made demand that the Defendants bring their property use into
22 compliance with their conditional use permit, Lincoln County Code Section 1.1375 and ORS
23 215.185 and the building/electrical, fire and septic laws by removing the extra dwellings
24 from the property, but Defendants have refused.

25 21.

1 Lincoln County Code Section 10.400(8) provides Lincoln County is entitled to it's
2 reasonable attorney fees and costs and disbursements for it's claim for relief.

3 CLAIM FOR RELIEF

4 COUNT ONE

5 DECLARATORY JUDGMENT

6 22.

7 Plaintiff realleges paragraphs 1-21.

8 23.

9 Pursuant to Lincoln County Code, section 10.400, and ORS 215.185, Plaintiff is
10 entitled to bring an action under the circumstances described in paragraphs 1-21, including
11 for declaratory relief in cases of violation of it's code.

12 23.

13 On information and belief, Defendants will claim that they are entitled to have several
14 dwellings on the subject property for the purposes of maintaining the property and/or as a
15 "temporary forest camp" relying on Lincoln County Code Section 1.1375(1)(h), providing an
16 outright use for "Temporary forest labor camps limited to the duration of the forest operation
17 requiring the use."

18 24.

19 Plaintiff alleges that defendants are not entitled to have more than one dwelling on
20 the property without being in violation of the conditional use permit for the use of the
21 property, as well as under Lincoln County Code and state law as pled in paragraph 19.

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25.

Plaintiff alleges the yurts and RVs are dwelling units due to their use, and having permanent (in the case of the yurts) electrical service, and septic service (all the units), and are developed as one and two bedroom dwellings with hot water heaters and kitchen and bath facilities. In at least some of the yurts, there are washing machines. More than one dwelling on Parcel 1 or Parcel 2 is a violation of state and county law and the conditional permit for the property

26.

On information and belief, defendants will argue that they did not need a permit to connect to septic or electrical to the yurts or RV and that the additional dwellings are allowed as part of a “Temporary forest labor camp .”

27.

Plaintiff alleges state law requires a permit for any new septic or electrical connection and the failure to obtain said permit is a violation of the law.

28.

Plaintiff alleges that the yurts additionally do not comply with the County Code requirements of fire resistant roofing, and therefore are not permitted dwelling units in the TC zone as required by Lincoln County Code section 1.1375 (7) (b); nor do the yurts or RV’s qualify as legal dwellings under the fire code which requires, among other things, operable windows for emergency egress.

29.

As a result of the disputes, this matter is a justiciable controversy for ORS 28.020 et.seq. and a declaratory judgment is sought in Plaintiff’s favor that:

a) The un-permitted yurts and recreational vehicles are dwelling units, and dwellings are not allowed as a “temporary forest logging camp,” and;

1 b) Defendants have a legal right to only one dwelling on the property pursuant to
2 Oregon law, Lincoln County Code and their conditional use permit, and;

3 c) The un-permitted yurts and recreational vehicles septic connections and electric
4 connections are all illegal under Oregon law and Lincoln County Code.

5 d) Any building on Parcel 2 has not been approved by Lincoln County, nor have
6 any permits been sought:

7 e) That all the conditions in a) through c) above constitute an actionable nuisance for
8 violation of Lincoln County Code as provided under Lincoln County Code section 10.400
9 et.seq., and;

10 f) That Plaintiff is entitled to it's reasonable attorney fees and costs pursuant to
11 Lincoln County Code 10.400(8) .

12 SECOND COUNT

13 MANDATORY INJUNCTION

14 30.

15 Plaintiff realleges paragraphs 1-21 and 22-29 herein.

16 31.

17 Pursuant to Lincoln County Code, section 10.400, and ORS 215.185, Plaintiff is
18 entitled to bring an action under the circumstances described in paragraphs 1-20, including
19 for injunctive relief.

20 32.

21 Defendants actions constitute a nuisance under Lincoln County Code Section 10.200
22 as a violation of Lincoln County Code.

23 33.

24 Plaintiff is entitled to a mandatory injunction requiring Defendants to remove the
25 yurts and RV dwellings, disconnect and decommission the septic connections and electrical
26

1 connections, and provide third party proof of such acts and a permanent injunction barring
2 Defendants from building or allowing any un-permitted dwelling on any of the Defendants
3 property in the future without County approval(s) as may be required by law.

4 34.

5 Plaintiff has no just, speedy or other remedy which would obtain compliance with it's
6 code, and enforcement responsibilities.

7
8 WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

9 1. On Plaintiff's First Count, a declaratory judgment as follows:

10 a) The un-permitted yurts and recreational vehicles are dwelling units, and dwellings
11 are not allowed as a "temporary forest logging camp," and;

12 b) Defendants have a legal right to only one dwelling on the subject property
13 pursuant to Oregon law, Lincoln County Code and their conditional use permit, and;

14 c) The un-permitted yurts and recreational vehicles septic connections and electric
15 connections are all illegal under Oregon law and Lincoln County Code.

16 d) Any building on Parcel 2 has not been approved by Lincoln County, nor have
17 any permits been sought:

18 e) That all the conditions in a) through d) above constitute an actionable nuisance
19 for violation of Lincoln County Code as provided under Lincoln County Code section 10.400
20 et.seq., and;

21 f) That Plaintiff is entitled to its reasonable attorney fees and costs pursuant to
22 Lincoln County Code 10.400(8) .

23 2. On Plaintiff's Second Count, a mandatory injunction requiring Defendants to
24 remove the yurts and RV dwellings, disconnect and decommission the septic connections and
25 electrical connections, and provide third party proof of such acts and a permanent injunction
26

1 | barring Defendants from building or allowing any un-permitted dwelling on any of the
2 | Defendants property in the future without County approval(s) as may be required by law,
3 | and;

4 | 3. Judgment for Plaintiffs reasonable attorney fees and costs as determined by law.

5 | Dated: September 22, 2023

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/s Douglas R. Holbrook
Douglas R. Holbrook OSB No. 872576
Assistant County Counsel, Lincoln County
Attorney for Plaintiff, Lincoln County

EXHIBIT 1
Subject Property Legal Description

PARCEL I:

Lot 2, PARTITION PLAT 1996-29 recorded June 5, 1996, Partition Plat Records for Lincoln County, Oregon; EXCEPTING THEREFROM that tract conveyed to David C. Maybee, et ux by instrument recorded June 28, 1996 in Book 320, page 1545, Microfilm Records for Lincoln County, Oregon, described as follows:

A tract of land in the Northeast quarter of Section 23, Township 14 South, Range 12 West, Willamette Meridian, Lincoln County, Oregon, described as follows:

Beginning at a 5/8 inch iron rod that is South 00° 22' 25" West 1419.00 feet and East 30 feet from the North quarter corner of said Section 23; thence East 473.20 feet to the true point of beginning; thence South 5.60 feet to a 5/8 inch iron rod; thence South 89° 43' 09" East 13.30 feet to a 5/8 inch iron rod; thence North 5.73 feet to a point East of the true point of beginning; thence West 13.30 feet to the true point of beginning.

PARCEL II:

The following portion of the Southwest quarter of the Northeast quarter of Section 23, Township 14 South, Range 12 West, Willamette Meridian, in Lincoln County, Oregon, to-wit:

Beginning at a point on the West line of the said Southwest quarter of the Northeast quarter that is 1980 feet South of the quarter section corner between Section 14 and 23 in said Township and Range; running thence East 1320 feet to the East line of said Southwest quarter of the Northeast quarter; thence Southerly along said East line, 660 feet, more or less, to the Southeast corner of said Southwest quarter of the Northeast quarter; thence Westerly along the South line of the Southwest quarter of the Northeast quarter 1320 feet to the Southwest corner of said Southwest quarter of the Northeast quarter and thence Northerly along the West line of the Southwest quarter of the Northeast quarter, 660 feet, more or less, to the place of beginning, in Lincoln County, Oregon.