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

LINCOLN COUNTY,)	Case No. 23CV38822
)	
Plaintiff,)	MOTION FOR SUMMARY
)	JUDGMENT
LINDA S. HETZLER and)	
THOMAS LARRY SMITH,)	ORCP 47
)	
Defendants.)	
)	

Comes now the plaintiff and moves the court to for Summary Judgment on it's claim for relief, First and Second Counts.

Plaintiff's motion is supported by the Points & Authorities below and the Declarations of Brian Crawford, John Rodriguez, and John William Joseph O'Leary (" John O'Leary").

Dated: December 8, 2023

/s Douglas R Holbrook
Douglas R Holbrook OSB 872576
Assistant County Counsel for Plaintiff
225 W Olive Street
Room 110
Newport, Oregon 97365
(541) 265-4108
dholbrook@co.lincoln.or.us

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Points & Authorities & Memorandum of Law

ORCP Authorities

ORCP 47 Summary Judgment provides:

A For claimant. A party seeking to recover on any type of claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move, with or without supporting affidavits or declarations, for a summary judgment in that party's favor as to all or any part of any claim or defense.

B Motion and proceedings thereon. The motion and all supporting documents must be served and filed at least 60 days before the date set for trial. The adverse party shall have 20 days in which to serve and file opposing affidavits or declarations and supporting documents. The moving party shall have five days to reply. The court shall have discretion to modify these stated times. The court shall grant the motion if the pleadings, depositions, affidavits, declarations, and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to prevail as a matter of law. No genuine issue as to a material fact exists if, based on the record before the court viewed in a manner most favorable to the adverse party, no objectively reasonable juror could return a verdict for the adverse party on the matter that is the subject of the motion for summary judgment. The adverse party has the burden of producing evidence on any issue raised in the motion as to which the adverse party would have the burden of persuasion at trial. The adverse party may satisfy the burden of producing evidence with an affidavit or a declaration under section E of this rule. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Memorandum/Argument

Defendants counterclaim's paragraphs 6-9 do not represent statements which are cognizable as a statements of ultimate facts which support any claim for relief or for that matter a defense/affirmative defense. Defendants have not controverted the Plaintiff's claim for relief, though they have generally denied the underlying facts in the complaint's paragraphs 1-22.

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STATEMENT OF FACTS

The declarations submitted herewith, and judicial notice, establish the following facts:

1. Lincoln County is a governmental body and political subdivision of the State of Oregon. This the court may take judicial notice of this fact.

2. The defendants property is zoned timber conservation (“TC”) pursuant to Lincoln County Zoning Code. Declaration of John O’Leary, Senior Planner, Lincoln County, paragraph 4.

3. TC zoning allows, on conditions, one single-family dwelling on a property. A conditional use was granted for the subject property on or about March 13, 1995. Defendants took title to the property subject to the conditional use permit. Declaration of John O’Leary, Senior Planner, Lincoln County, paragraph 5.

4. In 1995 defendants predecessor installed a manufactured home on the property, duly inspected and permitted by Lincoln County and was in compliance with the properties conditional use permit. Declaration of John O’Leary, Senior Planner, Lincoln County, paragraph 6..

5. At the same general time as the conditional use permit was granted, defendant’s predecessor in interest obtained a County-approved septic system designed to accommodate a three bedroom dwelling. Declaration of Brian Crawford , paragraph 4.

6. Defendants admitted in a meeting with planning staff that they had removed the manufactured home due to it’s condition, leaving the garage in November 2022. Declaration of John O’Leary, Senior Planner, Lincoln County, paragraph 9.

7. On or about March 14, 2023, agents of Lincoln County employees made a site visit (“site visit”) to Defendant’s property in response to an application Defendants had made, and

1 discovered that defendants had built four yurts on the property, three in which people were
2 living in (“occupied yurts”). Also two recreational vehicles were on the property, with
3 persons living therein, and a converted garage (no house existed) into a dwelling with
4 persons living therein. Declaration of Brian Crawford, Environmental Health, Lincoln
5 County, paragraph 4. The photographs attached Mr. Crawford’s declaration are from the site
6 visit.

7 8. At the site visit all the yurts and recreational vehicles were observed to have
8 electricity connected to them. Declaration of John Rodriguez, Building Official, Lincoln
9 County, paragraph 4.

10 9. At the site visit all the yurts and recreation vehicles were observed to have been
11 connected to the septic approved for the single family dwelling (manufactured home).
12 Additionally, the garage for the manufactured home had been converted into a dwelling and
13 was connected to the septic. Declaration of Brian Crawford, Environmental Health, Lincoln
14 County, paragraph 4.

15 10. The four occupied yurts, the RVs and converted garage meet the definition of
16 “dwelling unit” as set out in Lincoln County Code section 1.1115(29) and would then
17 constitute five single family dwellings as defined by LCC 1.1115(29)(a). Declaration of
18 John O’Leary, Senior Planner, Lincoln County, paragraph 5.

19 11. Under Oregon law, an application, approved permit and inspection are required
20 for residential electrical connections. The defendants in November 2022 had an approved
21 electrical permit but it described the electrical service to be for “accessory buildings,” not
22 dwellings. Declaration of John Rodriguez, Building Official, Lincoln County, paragraph 9.

23 12. Under Oregon law, an application, approved permit and inspection are required
24 to connect to or alter an existing approved septic system. The defendants did not obtain any
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1 permits for working on or connecting to the existing septic system. Declaration of Brian
2 Crawford, Environmental Specialist, Lincoln County, paragraph 5.

3 13. Septic load calculations, as mandated by state law provide that the effluent flow
4 for 5 dwellings is 2,250 gallons and would require a septic tank of 5,000 gallons. The
5 current system is designed for 450 gallons with a 1,000 gallon septic tank. In Mr.
6 Crawford's professional opinion, the Defendants have created a health hazard. Declaration
7 of Brian Crawford, paragraph 10

8 14. Having more than one dwelling on the TC land is a violation of LCC 1.1375, the
9 conditional use permit's terms, and ORS 215.185. Declaration of John O'Leary, Senior
10 Planner, Lincoln County, paragraph 12.

11 Argument

12 To grant a summary judgment motion, the moving party must establish that there are
13 no material facts in dispute and that the moving party is entitled to judgment as a matter of
14 law.

15 The facts as established by the declarations filed herein establish that there are no
16 material facts in dispute. Even defendants agree there is more than one dwelling on the TC
17 property subject to a conditional use (and law) allowing only one dwelling. The plaintiff is
18 simultaneously entitled to judgment as a matter of law based on the following:

19 1. ORS 215.185(1) provides:

20 **1. In case a building or other structure is, or is proposed to be, located,**
21 **constructed, maintained, repaired, altered, or used, or any land is, or is**
22 **proposed to be, used, in violation of an ordinance or regulation designed**
23 **to implement a comprehensive plan, the governing body of the county or**
24 **a person whose interest in real property in the county is or may be**
25 **affected by the violation, may, in addition to other remedies provided by**
26 **law, institute injunction, mandamus, abatement, or other appropriate**
proceedings to prevent, temporarily or permanently enjoin, abate, or
remove the unlawful location, construction, maintenance, repair,
alteration, or use. When a temporary restraining order is granted in a suit
instituted by a person who is not exempt from furnishing bonds or
undertakings under ORS 22.010 (State, county or city not required to furnish

1 any bond in any action), the person shall furnish undertaking as provided in
2 ORCP 82 A(1). (Emphasis added).

3 2. LCC 1.1375 provides that only one dwelling is conditionally allowed in the TC
4 zone. See Declaration of John O’Leary, paragraph 12.

5 **A. No Material Facts in Dispute**

6 1. Defendants have admitted to planning staff and in their amended answer, and the
7 photographic evidence attached to Brian Crawford’s Declaration and John Rodriguizs’
8 Declaration, establish the four yurts, a converted garage and at least one RV on the property,
9 and;

10 2. That these yurts, RV and converted garage constitute at least five dwellings and
11 are all connected to one septic system (Brian Crawford Declaration, paragraph 4), and;

12 3. The existing, approved, septic system on defendant’s property is designed for one
13 dwelling. That septic system was designed for 450 gallons of effluent per day, and a 1,000
14 gallon septic tank (Brian Crawford Declaration, paragraph 10), and;

15 4. The mandated calculation for the effluent load of 5 dwellings on the septic system
16 is 2,250 gallons per day, and the septic tank would be 5,000 gallons. (Brian Crawford
17 Declaration, paragraph 10). Because the defendants are in violation of the land use and other
18 laws, they cannot obtain a permit to build such a large system, and would have no need to
19 build such a system if they were following the law.

20 From the clear letter of the law, the defendants are in gross violation by establishing
21 at least five unpermitted dwellings on the property where only one single family dwelling is
22 allowed by law and the conditional use permit for the property.

23 **B. Defendants do not have a “temporary forest camp.”**

24 Defendants seem to have admitted they have more than one dwelling on the property
25 but claim in paragraph 6(a) of their Amended Complaint and argue that the county has no
26 jurisdiction over “Temporary forest labor camps.” First, the defendants don’t have a

1 “Temporary forest labor camp,” and second, the county does have jurisdiction pursuant to
2 ORS 215.185(1) and LCC 1.1375 and LCC 1.1375(k) which incorporates the state law
3 regarding temporary forest camps. Finally, there is no authority which allows a “Temporary
4 forest labor camp on land conditionally approved for one dwelling.

5 1. Not a “Temporary forest labor camp.” Defendants five dwelling are not a
6 temporary forest camp because the dwellings are not temporary in nature. The defendants
7 leave out some of the statute in the Amended Answer. ORS 152.037 states it is an “outright
8 use” of TC land for “Temporary forest labor camps *limited to the duration of the forest*
9 *operation requiring the use.*” The phrasing “temporary” and for a “limited duration” does
10 not describe what defendants have created. First, the yurts have been in place for longer than
11 one year with no evidence in any of the photographs of a defined forest operation. They
12 have instead created permanent housing on concrete slabs tied into a permanent septic
13 system and have permanent electric power connections (including electrical panels with
14 fuses), bathrooms and kitchens.

15 OAR 437-002-0142 makes Division 4/J. 437-004-1120 applicable to temporary labor
16 camps “operated by employers.” The inhabitants cannot all be defendant’s employees in the
17 forest business, if in fact any of them are so employed. Indeed she has admitted they are her
18 restaurant employees.

19 The regulatory scheme for forest land subject to Goal 4 is very restrictive on when
20 permanent dwellings may be placed on a forest resource land. The legal rules allowing a
21 “temporary forest camp” in context with the rest of the relevant laws, prove that a
22 “temporary forest camp” does not mean in any sense a permanent or semi-permanent
23 dwelling, especially where the forest labor camp would not meet the regulatory requirements.

24 1. OAR 660-035 includes the following language regarding when a dwelling is
25 authorized in TC-zoned property:
26

- 1 (d) **Dwellings authorized** by ORS 215.705 to 215.757 (ORS 215.757); and
2 (2) The following **uses** pursuant to the Forest Practices Act (ORS chapter 527)
and Goal 4 shall be allowed in forest zones:
- 3 (a) Forest operations or forest practices including, but not limited to,
4 reforestation of forest land, road construction and maintenance, harvesting of
5 a forest tree species, application of chemicals, and disposal of slash;
 - 6 (b) Temporary on-site structures that are auxiliary to and used during the term
7 of a particular forest operation;
 - 8 (c) Physical alterations to the land auxiliary to forest practices including, but
9 not limited to, those made for purposes of exploration, mining, commercial
10 gravel extraction and processing, landfills, dams, reservoirs, road construction
or recreational facilities; and
 - 11 (d) For the purposes of section (2) of this rule "auxiliary" means a use or
12 alteration of a structure or land that provides help or is directly associated
13 with the conduct of a particular forest practice. An auxiliary structure is
14 located on site, temporary in nature, and is not designed to remain for the
15 forest's entire growth cycle from planting to harvesting. An auxiliary use is
16 removed when a particular forest practice has concluded.
- 17 (3) The following uses may be allowed outright on forest lands:
- 18 (a) Uses to conserve soil, air and water quality and to provide for wildlife and
19 fisheries resources;
 - 20 (b) Farm use as defined in ORS 215.203;
 - 21 (c) Local distribution lines (e.g., electric, telephone, natural gas) and
22 accessory equipment (e.g., electric distribution transformers, poles, meter
23 cabinets, terminal boxes, pedestals), or equipment that provides service
24 hookups, including water service hookups;
 - 25 (d) Temporary portable facility for the primary processing of forest products;
 - 26 (e) Exploration for mineral and aggregate resources as defined in ORS chapter
517;
 - (f) Private hunting and fishing operations without any lodging
accommodations;
 - (g) Towers and fire stations for forest fire protection;
 - (h) Widening of roads within existing rights-of-way in conformance with the
transportation element of acknowledged comprehensive plans and public road
and highway projects as described in ORS 215.213(1) and 215.283(1);
 - (i) Water intake facilities, canals and distribution lines for farm irrigation and
ponds;
 - (j) Caretaker residences for public parks and public fish hatcheries;
 - (k) Uninhabitable structures accessory to fish and wildlife enhancement;
 - (l) Temporary forest labor camps;. . .

21 In the context of this list, there is a clear policy that no dwellings are allowed
22 outright. A "camp" is not a collection of permanent dwellings for non-forest activities under
23 any interpretation. A forest labor camp is a "use" not a right to have a dwelling, dwellings
24 only allowed under ORS 215.705 to 215.757.

1 OAR 660-006-0025 providing when a dwelling may be allowed on TC-zoned
2 property:

- 3 (d) Dwellings authorized by ORS 215.705 to 215.757 (ORS 215.757); and
4 (e) Other dwellings under prescribed conditions.

5 ORS 215.705 to 215.757 provide for dwellings in the forest zone in a few
6 circumstances:

7 1. ORS 215.705 allows one forest-zoned dwelling on these conditions:

8 (a) The lot or parcel on which the dwelling will be sited was lawfully
9 created and was acquired by the present owner:

10 (A) Prior to January 1, 1985; or

11 (B) By devise or by intestate succession from a person who acquired the
12 lot or parcel prior to January 1, 1985.

13 (b) The tract on which the dwelling will be sited does not include a
14 dwelling.

15 (c) The proposed dwelling is not prohibited by, and will comply with, the
16 requirements of the acknowledged comprehensive plan and land use
17 regulations and other provisions of law.

18 2. ORS 215.720 sets forth some criteria for approving a dwelling under ORS
19 215.705:

20 (1) A dwelling authorized under ORS 215.705 may be allowed on land
21 zoned for forest use under a goal protecting forestland only if:

22 (a) The tract on which the dwelling will be sited is in western
23 Oregon, as defined in ORS 321.257, and is composed of soils not
24 capable of producing 5,000 cubic feet per year of commercial tree
25 species and is located within 1,500 feet of a public road as defined
26 under ORS 368.001. The road shall be maintained and either paved or
surfaced with rock and shall not be:

(A) A United States Bureau of Land Management road; or

(B) A United States Forest Service road unless the road is paved to
a minimum width of 18 feet, there is at least one defined lane in each
direction and a maintenance agreement exists between the United
States Forest Service and landowners adjacent to the road, a local
government or a state agency. . .

**... (3) No dwelling other than those described in this section and
ORS 215.740, 215.750 and 215.755 may be sited on land zoned for
forest use under a land use planning goal protecting forestland.**

1 3. ORS 215.740 - Relating to large tracts of a minimum 160 contiguous acres.

2 4. ORS 215.750 - Alternative dwelling - the “Template Test” - where a designate
3 number of neighboring properties had dwellings on legal lots prior to a date in 1993. Only
4 one dwelling is allowed under this statute, and this is the basis for the conditional use for the
5 defendant’s property.

6 5. ORS 215.755 - Relating to alteration, restoration or replacement of a lawfully
7 established dwelling.

8 The legal scheme for dwellings in the forest zone are only as described above. It is
9 not possible to reasonably claim that a “forest work camp” means multiple permanent
10 dwellings on forest land. The electrical service is buried in the ground; the connections to
11 the septic are with permanent pipes. The yurts have bathrooms, showers, kitchens, sleeping
12 areas. These are not temporary forest camp structures.

13 **C. No Legal Compliance with Temporary Work Forest Camp law Establishes**
14 **Only Income Property.**

15 The fact this collection of five dwellings would seriously violate the laws governing
16 forest labor camps only proves the point that these are bootlegged dwellings.

17 1. These dwellings could not be a licensed forest work camp because such camps are
18 required to satisfy DEQ rules for septic effluent. (Brian Crawford Declaration, paragraph10).

19 2. Subsection 14 of OAR 437-004-1120 states for “labor camps:”

20 Sewage disposal and plumbing. (a) Connect the sewer lines from the labor housing
21 and related facilities to a community sewer system, a septic tank with subsurface
22 disposal of the effluent . . .conforming to *Department of Environmental Quality*
23 *Standards.*” (Emphasis added)

23 Department of Environmental Quality rules do not allow four or five dwellings to
24 overload a septic system designed for one dwelling. Defendants five (or more) dwellings do
25 not qualify as a temporary forest labor camp due to illegal septic connections overloading the
26 existing septic system. Therefore, the Defendants could not pass the requirements to be

1 licensed as a labor camp with the State of Oregon. See ORS 658.410 (requiring licensing)
2 and ORS 658.440 (requiring labor contractor's license) and ORS 658.453 (civil penalties).

3 Further in subsection (17)(e) of OAR 437-004-1120 the rule provides the following:

4 Note: construct and maintain all living areas in labor housing and related facilities to
5 comply with other applicable local and state laws and regulations in effect at the time
of construction or remodel.

6 This means that where construction would be in violation of LCC 1.1375 (one
7 dwelling in TC zoned property), building and/or septic laws, defendants would not be
8 permitted to establish a forest labor camp.

9 *Indeed, there is no law allowing a temporary labor camp on TC zoned land with a*
10 *dwelling already conditionally approved.* In this case, the Defendants have flagrantly
11 violated DEQ septic rules and therefore don't legally have anything like a forest work camp.

12 It is a farce to believe what the defendants have built is anything more or less than a
13 residential rental investment -- in a place and way that it is a violation of local and state laws
14 including fire code, building code and the landlord tenant act.

15 The yurts do not meet Lincoln County code (and common sense) requiring a fire
16 resistive roofing, as the roof is vinyl. The yurts do not comply with building code in that
17 they don't have two ways of egress, and the windows are not accessible through the interior
18 structural wooden lattice work.

19 Defendants, in paragraph 6(b) of the amended answer argue Lincoln County is
20 arbitrarily calculating septic loads. There is no discretion in calculating septic effluent flows
21 and the flows from five dwellings are about five times that allowed by DEQ rules. See
22 Declaration of Brian Crawford, paragraph 10.

23 In sum, these are income producing dwellings for the defendants, nothing more.
24 Defendants have grossly and defiantly violated the law to build them, and will no doubt build
25 more if they are not stopped.

1 **2. Plaintiff is entitled to judgment as a matter of law.** The dwellings are illegally
2 placed as established above, and are creating a public health danger by severely over taxing
3 the septic system. They have defiantly built without permits for plumbing, septic, and lied
4 on their electrical permit to say the electrical circuits were going to be accessory structures
5 (not dwellings - e.g. a barn or storage shed). See Brian Crawford Declaration, paragraph 9;
6 John Rodriguez Declaration, paragraph 8-10.

7 Plaintiff is entitled to the relief sought in Count One of the Complaint, including a
8 declaratory judgment that:

9 1) They yurts and recreational vehicles are dwelling units, and these dwellings
10 are not allowed as a “temporary forest logging camp,” and;

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

13 3) The yurts and recreational vehicles septic connections and electric
14 connections are all illegal under Oregon law and Lincoln County Code.

15 4) That all the conditions in 1) through 3) above constitute an actionable nuisance for
16 violation of Lincoln County Code as provided under Lincoln County Code section 10.400
17 et.seq., and;

18 5) That Plaintiff is entitled to it’s reasonable attorney fees and costs pursuant to
19 Lincoln County Code 10.400(8) .

20 2. Plaintiff is further entitled to relief sought under Count 2 of the Complaint
21 including that:

22 1) Plaintiff is entitled to a mandatory injunction requiring Defendants to remove the
23 yurts and RV dwellings, disconnect and decommission the septic connections and electrical
24 connections, and provide third party proof of such acts and;

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CERTIFICATE OF SERVICE

The undersigned certifies that on December 8, 2024 a copy of the attached Motion for Summary Judgment and declarations to be sent to the following person by the indicated methods:

By E-mail to: lindahetzler2@icloud.com

By Oregon Odyssey File and Serve

Dated: December 8, 2023

/s Douglas R Holbrook
Douglas R Holbrook OSB 872576
Assistant County Counsel for Plaintiff
225 W Olive Street
Room 110
Newport, Oregon 97365
(541) 265-4108
dholbrook@co.lincoln.or.us