

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Dismissing the Appeal by )  
the Oregon Department of Land Conservation )  
and Development of Planning Docket L-45-15 ) Board Order 16-103  
(applicant Youngman Family Trust) for Lack )  
Of Standing and Lack of Jurisdiction )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on March 17, 2016 Commissioners Mary Starrett, Stan Primozych, and Allen Springer being present.

IT APPEARING TO THE BOARD as follows:

- A. By application dated October 26, 2015, Robert and Betty Janzen of the Youngman Family Trust applied for a Lot Line Adjustment Permit for Tax Lot R2526-1400;
- B. The Yamhill County Planning Director, Mike Brandt, approved Mr. and Mrs. Janzen's application, on December 15, 2015;
- C. On December 30, 2015, the Oregon Department of Land Conservation and Development (DLCD) submitted an Appeal Application to the Yamhill County Planning Department;
- D. On January 4, 2016, the Planning Department received a \$250.00 check from DLCD for payment of the Appeal Application filing fee;
- E. On March 10, 2016, attorney Joseph Strunk, on behalf of the Youngman Family Trust, objected to the proceedings and requested that the county dismiss the appeal, stating that DLCD failed to provide the county with the appropriate filing fee required by Yamhill County Zoning Ordinance sections 1404.01 and 1404.03, within the time allowed by the Ordinance.
- F. After considering arguments, the Board voted unanimously on March 10, 2016, to dismiss the appeal for lack of standing and jurisdiction; and
- G. The findings attached as Exhibit A represent the county's written decision to dismiss DLCD's December 30, 2015 application for appeal of the Planning Director's approval of lot line adjustments in Planning Docket L-45-15, Youngman Family Trust, applicant; NOW, THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. The appeal by DLCD of Planning Docket L-45-15 is hereby dismissed.

Section 2. The findings attached as Exhibit "A" and incorporated herein by reference are hereby adopted in support of this Order.

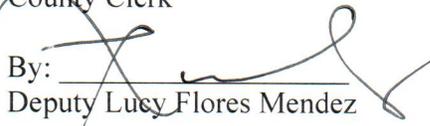
DONE this 17<sup>th</sup> day of March, 2016 at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

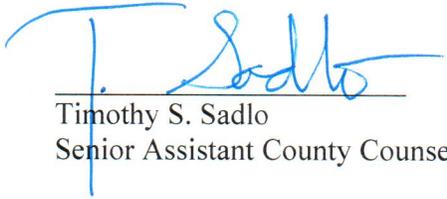
BRIAN VAN BERGEN

County Clerk

By: 

Deputy Lucy Flores Mendez

FORM APPROVED BY:

  
Timothy S. Sadlo

Senior Assistant County Counsel

Chair

  
MARY STARRETT

Commissioner

  
STAN PRIMOZICH

Commissioner

  
ALLEN SPRINGER

Accepted by Yamhill County  
Board of Commissioners on

3.17.16 by Board Order

# 16-103

**Exhibit A – Board Order 16-103  
Findings in Support of Dismissal**

**DOCKET NO.:** L-45-15

**REQUEST:** An appeal of an approval for a property line adjustment to reconfigure the parcels approved through Docket P-17-15, transferring 38 acres from Parcel 3 to Parcel 2 and an adjustment to transfer 5 acres from Parcel 3 to Parcel 1, resulting in lots of 7, 11 and 40 acres.

**APPLICANT:** Robert and Betty Janzen

**OWNER:** Youngman Family Trust

**APPELLANT:** Department of Land Conservation and Development

**TAX LOT:** 2526-1400

**LOCATION:** On the western boundary of 15345 NW Tupper Road, Yamhill, Oregon

**ZONE:** AF-40 Agriculture/Forestry Use

**CRITERIA:** Measure 49 approval 121524, Section 403.11(B)(2) of the Yamhill County Zoning Ordinance and the Yamhill County Land Division Ordinance

**FINDINGS:**

1. The Yamhill County Planning Director approved an application for a lot line adjustment in Docket No. L-45-15. The Director gave notice of the approval of L-45-15 pursuant to the Yamhill County Zoning Ordinance. The notice stated that any party wishing to appeal the approval in L-45-15 must file an appeal, "together with a \$250.00 filing fee," no later than the appeal deadline of 5:00 p.m., December 30, 2015, which is consistent with the requirements of the Ordinance. The Director delivered the Notice to several parties, including the Department of Land Conservation and Development ("DLCD"). DLCD submitted a written appeal to the Director by email on December 30, 2015. No other written appeals of L-15-15 were received by the Director. The Director did not receive any filing fee related to an appeal of L-45-15 on or before the deadline of 5:00 p.m., December 30, 2015. The Director received \$250.00 from DLCD on January 4, 2016.

2. Yamhill County Zoning Ordinance Section 1404.01 governs the appeal of Planning Director decisions and states, in relevant part:

"Where it is alleged that there is error in any land use decision made by the Director in the interpretation of this ordinance, an appeal therefrom may be made

by an affected party only to the Board on a form prescribed by the Director. Such written appeal shall be filed with the Director within fifteen (15) days of the decision on a proposed action and shall be accompanied by the appropriate filing fee.”

3. Yamhill County Zoning Ordinance Section 1404.03 is entitled “Standing to Appeal.” It states, in relevant part:

“A. A decision by the Director, Planning Commission or Board of Commissioners to approve or deny an application or docket item request may be appealed provided the appellant has satisfied Subsections 1, 2, and 3:

1. Filed a written appeal accompanied by the appropriate filing fee, with the Director within the time required by this ordinance submitted in accordance with Subsection B of this section;”

4. On their face, both of these sections appear to require that a written appeal must be accompanied by the appropriate filing fee, and that both the application and the filing fee must be filed with the Director prior to the appeal deadline. The zoning ordinance appears to make the requirement of filing the written application and providing the filing fee within the appeal deadline a jurisdictional requirement. It does so by requiring the timely application and fee as a prerequisite to establishing standing.

5. The Board interprets the county’s zoning ordinance, and especially the sections cited above, as requiring that the written appeal and the appropriate filing fee both be filed with the Director prior to the appeal deadline. The Director has no authority to waive this jurisdictional standing requirement. An appellant who fails to timely file a written appeal application and filing fee lacks standing to bring the appeal, and deprives the Board of jurisdiction to hear the appeal.

6. Section 1405.02 of the county’s zoning ordinance states, in relevant part, with regard to fees:

“Upon recommendation from the Director or the hearings body or upon its own motion, the Board may waive, for just cause, any filing fee established by this Section.”

This section allows the Board to waive filing fees, but does not allow the Director to waive filing fees independent of the Board. In this case, no request was made for a waiver of the fee. There is also no zoning ordinance provision that allows the Director to accept a late application for an appeal of a Planning Director decision, or to allow the Planning Director to accept late payment of the filing fee.

7. The Board finds that DLCD does not have standing to appeal the approval of L-45-15 to the Board, and the Board does not have jurisdiction to hear the appeal, because no party having standing filed a timely appeal accompanied by the required filing fee. DLCD did not comply

with the requirements to establish standing found in Section 1404 of the Ordinance because the Director did not receive the filing fee required by Section 1404 until after the deadline to do so as established by the Ordinance.

8. DLCDC did not request from the Board a waiver of the filing fee requirement of Section 1404 of the Ordinance. DLCDC did not receive from the Board a waiver of the filing fee requirement of Section 1404 of the Ordinance. The requirements of Section 1404 were not waived.

For the reasons stated above, DLCDC's appeal of the Planning Director's decision in Planning Docket L-45-15 is dismissed.