

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 the Denial of Docket C-11-18/)
SDR-17-18, an Application for Conditional Use)
and Site Design Review for a 12-acre Solar Power) Board Order 19-95
Generation Facility (Applicant: ForeFront Power)
LLC) on land zoned EFU (Tax Lot 3427-800),)
Because the Board Lacks Jurisdiction to Consider)
the Application Under State Law)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on April 4, 2019, Commissioners Richard L. “Rick” Olson, Mary Starrett and Casey Kulla being present.

IT APPEARING TO THE BOARD as follows:

A. On March 27, 2018, ForeFront Power, LLC, submitted an application for conditional use approval and site design review for a solar power generation facility of approximately 12-acres on Tax Lot 3427-800, zoned for Exclusive Farm Use. By letter dated April 6, 2018, the Planning Department deemed the application to be “incomplete,” and specified the missing information. The applicant made subsequent efforts to complete the application, but as of September 21, 2018, the applicant had not submitted all of the missing information, and had not provided written notice that no other information would be provided.

B. By letter dated December 11, 2018, Planning Director Ken Friday denied the application. A timely appeal was filed by the applicant, and the appeal was scheduled to be heard by the Board on February 28, 2019. At that time, the Planning Director advised the Board that, following a review of state law and caselaw interpreting state law, he believed that the Board lacked jurisdiction to hear the appeal and/or to grant the application.

C. After considering the Planning Director’s objection to jurisdiction and receiving comment from the applicant and others, the Board voted 2-0 (one Commissioner excused) to declare the application void, and terminated the public hearing. NOW, THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. Docket C-11-18/SDR-17-18, is hereby denied because the application is void and the Board does not have jurisdiction to approve it.

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

DONE this 4th day of April, 2019 at McMinnville, Oregon.

ATTEST:



YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN (abstained)
County Clerk

Chair

RICHARD L. "RICK" OLSON

By: *Carolina Rook*
Deputy Carolina Rook

Commissioner

Mary Starrett
MARY STARRETT

FORM APPROVED BY:

Commissioner

Casey Kulla
CASEY KULLA

T. Sadlo
Timothy S. Sadlo
Senior Assistant County Counsel

Exhibit A
Board Order 19-95

Findings in Support of Denial of
Docket No. C-11-18/SDR-17-18

FINDINGS:

1. These findings are adopted to explain why the Board concluded (1) that the application filed in this matter is void, and (2) that the Board lacks jurisdiction to consider and/or approve the application.

2. ORS 215.427(2) states:

“(2) If an application for a permit, limited land use decision or zone change is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section and ORS 197.311 upon receipt by the governing body or its designee of:

- (a) All of the missing information;
- (b) Some of the missing information and written notice from the applicant that no other information will be provided;
- (c) Written notice from the applicant that none of the missing information will be provided.”

3. In this case, the application was filed on March 27, 2018. By letter to the applicant dated April 6, 2018, the Planning Department deemed the application “incomplete,” and specified exactly what information was missing.

4. By letter received and date stamped September 21, 2018, the applicant responded to the Department’s April 6, 2018 incompleteness letter. The letter was accompanied by significant additional information needed to make the application complete, but did not include all of the information listed in the Department’s April 6 letter, and did not state that “no other information will be provided.”

5. The applicant continued to provide information to the Department following the September 21, 2018 submittal. By e-mail dated October 11, 2018, Planning Department staff stated in an e-mail that the application was “deemed complete” as of October 9, 2018.

6. ORS 215.427(3)(a) states:

“(3)(a) If the application was complete when first submitted or the applicant submits additional information as described in subsection (2) of this section, within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.”

7. Finally, ORS 215.427(4) states:

“(4) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (2) of this section and has not submitted:

- (a) All of the missing information;
- (b) Some of the missing information and written notice that no other information will be provided; or
- (c) Written notice that none of the missing information will be provided.”

8. Under this statute, on September 24, 2018, the application submitted in this matter was void. Since the application was void by operation of state law as of September 24, 2018, Planning Department staff could not deem the application complete after that date. The application was not complete as of September 24, 2018, and the applicant had not indicated that “no other information will be provided,” but continued to provide the information that would have made the application complete, apparently as late as October 9, 2018.

9. Bora Architects, Inc. v. Tillamook County, LUBA No. 2017-038, November 21, 2017, 2017 WL 6032710; *aff'd*, 291 Or App 537, 422 P3d 412 (2018), confirms the county’s view and establishes that, as of September 23, 2018, the application submitted in this case was either “void” due to lack of county jurisdiction to consider it, or “prohibited as a matter of law” under ORS 215.427(4).

10. In Bora Architects, LUBA reversed a Tillamook County decision to approve an application for development, finding that the county Board of Commissioners could not approve the application due to ORS 215.427(4). The applicant (Seabreeze) appealed to the Oregon Court of Appeals, which affirmed LUBA, and held:

“Because Seabreeze was notified of the information missing from its application ‘as required by subsection (2) [of ORS 215.427] Seabreeze had to act as provided in ORS 215.427(4) before the 181st day after it first submitted its application. Seabreeze did not do that, and, accordingly, its application was void under that statute as of January 12, 2016, and the county could not approve it. We therefore affirm LUBA’s order.” (at 545-46, 416-17)

11. Under ORS 215.427 and Bora Architects, Yamhill County Planning Department staff had no authority to deem the application complete in this case following the date the application had become void by operation of law. Likewise, the Board had no authority to consider in a public hearing or to issue a decision approving the application. The application was void as of September 24, 2018, and the Board lacked jurisdiction to consider or approve it.

END