



Deschutes County Board of Commissioners
1300 NW Wall St., Suite 200, Bend, OR 97701-1960
(541) 388-6570 - Fax (541) 385-3202 - www.deschutes.org

AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of November 4, 2015

DATE: October 28, 2015

FROM: Peter Gutowsky CDD (541) 385-1709

TITLE OF AGENDA ITEM:

Work Session to discuss applications for a Plan Amendment and Zone Change (247-14-000456-ZC, 247-14-000457-PA) from Exclusive Farm Use (EFU-TRB) to Rural Industrial (RI) for a 21.59-acre site located at Deschutes Junction north of Bend. The proposal includes a Goal Exception to Statewide Planning Goal 14, Urbanization.

PUBLIC HEARING ON THIS DATE? No

BACKGROUND AND POLICY IMPLICATIONS:

Anthony Aceti applied for the Plan Amendment and Zone Change. The applications went before a County Hearings Officer at a public hearing on July 14, 2015. The Hearings Officer approved the applications in a written decision dated October 1, 2015. The County Procedures Ordinance (DCC 22.28.030(C) requires that applications for a plan amendment/zone change that involve lands designated for agricultural use, and including those involving a goal exception, be heard de novo by the Board of County Commissioners (Board). A hearing before the Board is therefore required and must be heard de novo. The hearing is scheduled for November 23.

FISCAL IMPLICATIONS:

None.

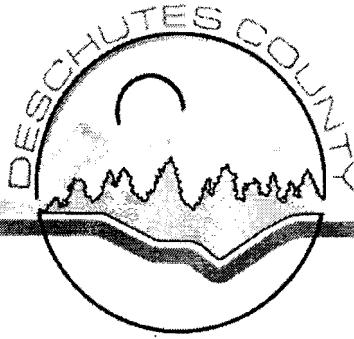
RECOMMENDATION & ACTION REQUESTED:

This is information only, to prepare the Board for the upcoming hearing on November 23. The hearing packet which is forthcoming, will include the Hearings Officer decision and any written testimony submitted since October 1.

ATTENDANCE: Peter Gutowsky, Paul Blikstad

DISTRIBUTION OF DOCUMENTS:

N/A.



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005
(541)388-6575 FAX (541)385-1764
<http://www.co.deschutes.or.us/cdd/>

MEMORANDUM

DATE: October 28, 2015

TO: Deschutes County Board of Commissioners

FROM: Peter Gutowsky, Planning Manager
Paul Blikstad, Senior Planner

RE: Work Session: Plan Amendment, Zone Change and Goal Exception (247-14-000456-ZC, 247-14-000457-PA)

This memorandum prepares the Board of County Commissioners (BOCC) for a public hearing on November 23, to consider a plan amendment and zone change from Exclusive Farm Use to Rural Industrial, and a goal exception to Goal 14 (Urbanization), for a 21.59 acre site located at Deschutes Junction (247-14-000456-ZC, 247-14-000457-PA). The applicant is Anthony Aceti.

Background

Stephanie Hicks, a Hearings Officer on September 30, 2015 approved a Comprehensive Plan Map amendment to re-designate the subject property from Agriculture to Rural Industrial and a corresponding Zone Map Amendment (Zone Change) to reassign the zoning from Exclusive Farm Use Tumalo/Redmond/Bend Subzone (EFU-TRB) to a Rural Industrial Zone (R-1) and a Goal 14 Exception, subject to 8 conditions of approval.

Deschutes County Code (DCC) 22.28.030(C), Decision on Plan Amendments and Zone Changes states:

Plan amendments and zone changes requiring an exception to the goals or concerning lands designated for forest or agricultural use shall be heard de novo before the Board of County Commissioners without the necessity of filing an appeal, regardless of the determination of the Hearings Officer or Planning Commission.

Key Findings

I. Not Agricultural Land

The Hearings Officer found that the subject property does not constitute "agricultural land" as defined in Goal 3, OAR 660-033-0020(1). An Agricultural Soils Capability Assessment produced by Mr. Roger Borine determined that the subject property is approximately 80% class VII and VIII soils (17.2 acres), and 20% class III-VI soils (4.3

acres) and therefore not predominantly Agricultural Land. Substantial evidence in the record supports a finding that the subject property does not constitute "agricultural land." The soils study is adequate for determining whether the subject property consists of predominantly Class VII and VIII soils and whether it is unsuitable for farm use, considering profitability and factors in the Goal 3 administrative rule, as set forth in the findings below:

- The property is unsuitable for farm use considering, among other things:
 - difficulties associated with irrigating the property (lack of easement to access the irrigation pond/ditch constructed pursuant to a settlement between previous owner Gary Barrett and ODOT);
 - surrounding road network, impacts of nearby heavy traffic and transportation, impacts on the subject property of the expansion of Highway 97, the bisection of the property with the construction of Tumalo Road interchange/overpass; and,
 - surrounding commercial and industrial uses, the lack of surrounding farm uses, and the relatively small size of the parcel, which impacts economies of scale.

II. Transportation Planning Rule Compliance

The Hearings Officer found that the components listed below of the Transportation Management Plan (TMP) satisfy OAR 660-012-0060(4) for this rezone and Goal exception application. They are recommended as conditions of approval.

As part of any development of the property, the developer shall:

1. Create a system of access easements that connect the three driveways with any lots created by partitioning or subdividing of the land.
2. Work with Commute Options to assist in preparing a two year start-up Transportation Demand Management program (TDM). The program will include:
 - A. Conducting workshops and training on TDM alternatives;
 - B. Provide posters and brochures promoting smart commuting choices;
 - C. A plan to have employees from on-site businesses have staggered start and end work hours.
3. Prepare an internal Traffic Control Plan (in accordance with the MUTCD), that includes:
 - A. Directional signing to Redmond, Bend, Tumalo at each intersection;
 - B. Time-restrictive (4 PM – 6 PM) "NO LEFT TURN" sign at the driveway onto Tumalo Place;
 - C. Bridge undercrossing shall be signed "ONE LANE ROAD";
 - D. Prepare a site map, with the aid of DCPWD, showing the location of traffic control devices.
4. Have the Deschutes County Transportation Planner approve Traffic Management Plan.

III. Change in Circumstances

The Hearings officer found the following general circumstances have changed with respect to the subject property and/or to other property in the vicinity since 1990 and are not representative of a change in the property owner's circumstances or needs:

- The reduction of the number of acres in the applicant's parcel due to road projects.
- The reduction in the average parcel size within 1 mile of the subject property from 80 acres to 5 acres.
- The reconfiguration of the parcel into two distinct, irregularly shaped portions that are difficult, expensive, and nearly impossible to farm and irrigate.
- The construction of the Deschutes Junction overpass across the subject property which resulted in lack of irrigation water, and adverse changes in location, size, configuration and soils rendering the property un-farmable.
- The fact that the ODOT Highway 97 widening project in February 1991, cut through a shared irrigation pond, reducing it by 75% and making it inoperable.
- The fact that the land has not been irrigated since the overpass was constructed and cut through the established irrigation system.
- The re-routing of commuter traffic onto roads around the subject property.
- The construction and realignment of Tumalo Place, Tumalo Road, Deschutes Market Road and Pleasant Ridge Road around the property.
- The rezone of some of the adjacent United Pipe property and some of Ron Robinson's property (4R Equipment) to RI.
- The continuous subdivision, platting and replatting of new residential lots in the vicinity and the fact that no parcel within ½ mile of the subject property is being commercially farmed today.
- The fact that commercial, industrial, wholesale and retail businesses now surround the property on its northern and eastern sides, and a school is on the western side; and the fact that no one farms the 4-acre parcel developed with a rental house adjacent to the southern end of the property.
- The fact that Mr. Aceti did not receive an easement or written agreement to irrigate the property when he purchased the property; despite the fact that ODOT paid in 1991 to have a new ditch and pond dug along Half Mile Lane on TL 1100, Mr. Aceti did not receive any easement or right to use TL 1100 or 1200 or the equipment for delivery of irrigation water to the subject property.

IV. Irrevocably Committed to Urban Development (Goal 14 Exception – Urbanization)

The Hearings Officer found the applicant appropriately requested an "irrevocably committed" exception based on existing parcel sizes and contiguous ownerships considered together. The analysis of existing adjacent uses showed that the Deschutes Junction area has been committed to residential development to the north, with a mix of commercial and rural industrial development served by the transportation hub roads and overpass and proximity to Highway 20 and Highway 97, and the Burlington Northern railroad. Development (e.g., physical improvements such as roads and underground facilities) on the subject property has made unsuitable its resource use and the resource use of nearby lands. This occurred via the Highway 97 expansion project and the Deschutes Junction overpass/Tumalo Road project, and the Highway 97 on-off ramps via Tumalo Place, forming the northern boundary of the subject property. The subject property does not stand alone amidst larger farm or forest operations because no such operations exist in the surrounding area.

Substantial evidence in this record shows that the subject property bears a greater relation to the existing industrial uses to the east, accessed via the Tumalo Road/Highway 97 overpass that bisects the property, and to the commercial uses to the north of the property, than to rural residential uses to the south and west. This is due to the location of the property in the center of the primary existing transportation hub between the cities of Bend and Redmond.

The Hearings Officer found the subject property is unsuitable for agricultural uses because of its size, poor quality soils, lack of irrigation, and location virtually surrounded by existing industrial development. These conditions also make use of the site with rural/non-urban uses impracticable. Based on these facts, coupled with the adjacent industrial, commercial and rural residential uses, the existence of an extensive network of roads and highways, and the overpass that cuts through the applicant's subject property, the Hearings Officer found that it was not appropriate to apply Goal 14's requirement prohibiting the establishment of urban uses on rural lands with respect to the subject property.