



Community Development Department

Planning, Building Safety, Environmental Soils, Code Enforcement
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MEMORANDUM

TO: Deschutes County Planning Commission

FROM: Nick Lelack, Director
Matthew Martin, Associate Planner

DATE: March 17, 2016

SUBJECT: Agenda Overview, March 24, 2016 Meeting

I. DELIBERATIONS: 247-16-000021-TA / 22-PA

The purpose of this agenda item is for the Planning Commission to complete its deliberations on the proposed text amendment to Comprehensive Plan, Chapter 2, Section 2.2 and Chapter 3, Section 3.3, recognizing non-resource lands process under to state law to change Exclusive Farm Use zoning.

The Commission made recommendations to approve text amendments to Deschutes County Code on the proposed definition of agricultural-exempt buildings and to reduce setbacks in the F-2 Zone for the Haner Park Subdivision and an adjoining 3-acre tax lot.

II. WORK SESSION: KUHN DECLARATORY RULING REQUEST

On March 10, William Kuhn asked the Planning Commission to recommend the Board of County Commissioners initiate a Declaratory Ruling to determine if "County Code was followed" in his cluster development (CU-80-22) and, "if not, why not?" The Commission directed staff to include this item on the March 24, 2016 agenda and to consult with County Counsel on this issue.

Deschutes County Code 22.40 governs Declaratory Rulings. Staff has highlighted to the potentially applicable sections in DCC 22.40 below. DCC 22.40.010(A)(1-5) defines the plans, codes or land use permits/decisions to be interpreted or determined in a Declaratory Ruling application. DCC 22.40.010(B-D) provide the sidebars for such applications.

22.40.010. Availability of Declaratory Ruling.

- A. Subject to the other provisions of DCC 22.40.010, there shall be available for the County's comprehensive plans, zoning ordinances, the subdivision and partition ordinance and DCC Title 22 a process for:
1. Interpreting a provision of a comprehensive plan or ordinance (and other documents incorporated by reference) in which there is doubt or a dispute as to its meaning or application;
 2. Interpreting a provision or limitation in a land use permit issued by the County or quasi-judicial plan amendment or zone change (except those quasi-judicial land use actions involving a property that has since been annexed into a city) in which there is doubt or a dispute as to its meaning or application;

3. Determining whether an approval has been initiated or considering the revocation of a previously issued land use permit, quasi-judicial plan amendment or zone change;
 4. Determining the validity and scope of a nonconforming use; and
 5. Determination of other similar status situations under a comprehensive plan, zoning ordinance or land division ordinance that do not constitute the approval or denial of an application for a permit.
Such a determination or interpretation shall be known as a "declaratory ruling" and shall be processed in accordance with DCC 22.40. In all cases, as part of making a determination or interpretation the Planning Director (where appropriate) or Hearings Body (where appropriate) shall have the authority to declare the rights and obligations of persons affected by the ruling.
- B. A declaratory ruling shall be available only in instances involving a fact-specific controversy and to resolve and determine the particular rights and obligations of particular parties to the controversy. Declaratory proceedings shall not be used to grant an advisory opinion. Declaratory proceedings shall not be used as a substitute for seeking an amendment of general applicability to a legislative enactment.
 - C. Declaratory rulings shall not be used as a substitute for an appeal of a decision in a land use action or for a modification of an approval. In the case of a ruling on a land use action a declaratory ruling shall not be available until six months after a decision in the land use action is final.
 - D. The Planning Director may refuse to accept and the Hearings Officer may deny an application for a declaratory ruling if:
 1. The Planning Director or Hearings Officer determines that the question presented can be decided in conjunction with approving or denying a pending land use action application or if in the Planning Director or Hearings Officer's judgment the requested determination should be made as part of a decision on an application for a quasi-judicial plan amendment or zone change or a land use permit not yet filed; or
 2. The Planning Director or Hearings Officer determines that there is an enforcement case pending in district or circuit court in which the same issue necessarily will be decided as to the applicant and the applicant failed to file the request for a declaratory ruling within two weeks after being cited or served with a complaint.

The Planning Director or Hearings Officer's determination to not accept or deny an application under DCC 22.40.010 shall be the County's final decision.

(Ord. 95-045 §47, 1995)

Planning staff consulted with County Counsel on this issue and question. It is the opinion of Planning staff and County Counsel that the Declaratory Ruling application process is not available to address the questions/issues articulated by Mr. Kuhn, to wit, whether or how "County Code was followed" or not in implementing a land use permit that dates back to 1980. It appears to staff that Mr. Kuhn is seeking an advisory opinion, which is addressed in DCC 22.40.010(B).

Planning Commission Options

1. Decline to make a recommendation to the Board on this request.
2. Recommend the Board initiate a Declaratory Ruling.
3. Recommend the Board not initiate a Declaratory Ruling.