



BOARD OF COMMISSIONERS

1300 NW Wall Street, Bend, Oregon
(541) 388-6570

FOR RECORDING STAMP ONLY

BOCC MEETING MINUTES

1:30 P.M.

WEDNESDAY August 17, 2022

Barnes Sawyer Rooms
Live Streamed Video

Present were Commissioners Patti Adair, Anthony DeBone, and Phil Chang. Also present were Nick Lelack, County Administrator, and David Doyle, County Counsel.

This meeting was audio and video recorded and can be accessed at the Deschutes County Meeting Portal website www.deschutes.org/meetings

CALL TO ORDER: Chair Adair called the meeting to order at 1:31 p.m.

PLEDGE OF ALLEGIANCE

CONSENT AGENDA: Before the Board was Consideration of the Consent Agenda.

DEBONE: Move approval of Consent Agenda

CHANG: Second

Discussion: Commissioner DeBone noted that for any citizens having questions regarding the Domestic Well Assistance funding to email johnc@neighborimpact.org. Commissioner DeBone also thanked the two community members who volunteered to serve on the Dog Board.

Commissioner Adair clarified that the funding that was just received by the County for the Domestic Well Assistance is for citizens that had problems with their wells in 2021. The County is actively pursuing additional funding for 2022 well issues.

VOTE: DEBONE: Yes
 CHANG: Yes
 ADAIR: Chair votes yes. Motion Carried

1. Consideration of Resolution No. 2022-059 Adopting a Supplemental Budget and Increasing Appropriations within Non Departmental General Fund and the 2022-23 Deschutes County Budget
2. Consideration of Board Signature of Letters Appointing Daniel Holland and Carol Martin to the Deschutes County Dog Board of Supervisors
3. Approval of Minutes of the August 8, 2022 BOCC Meeting
4. Approval of Minutes of the August 10, 2022 BOCC Meeting

OTHER ITEMS:

- Commissioner Chang requested staff to research the possibility of federal funding through the Community Development Block Grant Program to assist with these ongoing well issues. Commissioner DeBone asked County Administrator Nick Lelack to calendar an action item for drafting a letter for federal funding to address the County's depleting water sources.

RECESS: At the time of 1:36 p.m., the Board recessed and will reconvene for the public hearing at 2:00 p.m.

EXECUTIVE SESSION: At the time of 1:38 p.m., the Board went into Executive Session (in the Allen Room) under ORS 192.660 (2) (h) Litigation. The Board came out of Executive Session at 1:44 p.m. to direct staff to proceed as directed.

ACTION ITEMS:

5. PUBLIC HEARING: Eden Properties Plan Amendment and Zone Change (247-21-001043-PA, 1044-ZC)

Commissioner Adair read a statement regarding the hearing process.

Associate Planner Haleigh King outlined the procedure for the public hearing and asked the public if there were any objections to the format of the hearing. No objections were made by the public. The Commissioners were asked if they had any conflicts of interest or bias to disclose, to which they all responded no. The public was asked if there were any challenges to any alleged *ex parte* communications by any Commission members. No challenges were made by the public. The public hearing was then opened.

Ms. King presented details about the application filed by 710 Properties LLC/Eden Central Properties, LLC. The Applicant seeks a Comprehensive Plan Map Amendment to change the subject property from an agricultural designation to a rural residential exception area and a Zoning Map Amendment to change the subject property from EFU to RR-10 for the possible development of approximately 710 acres into 71 ten-acre homes sites. The hearings officer's decision (recommending approval of the application), concluded that the Applicant met its burden of proof that the subject property is not agricultural land and cannot be utilized for agricultural use as defined in state statute.

Ms. King advised that staff has received written comments and documents both in opposition and support. All written materials that have been received are added to the record. Commissioner DeBone further noted that emails sent to Board@deschutes.org have been forwarded to staff to be included in the record.

Ms. King advised that County staff with the Road Department is available regarding any concerns related to possible traffic increases due to the proposed amendment change and rezone. The Oregon Department of Water Resources is also available at today's hearing to answer questions related to possible increases in water usage if the application is approved.

Commissioner DeBone requested clarification regarding notification issues with the public hearing. Legal Counsel David Doyle is continuing to research procedural concerns.

Commissioner Chang requested clarification regarding the hearings officer's reference to one parcel receiving an EFU tax deferral despite the finding that the subject property is not agricultural land. He asked which parcel received the deferral and whether there is a process to retroactively reconcile that for the County. Mr. Doyle advised that the Assessor's Office receives requests annually regarding tax deferrals, and they are periodically reviewed via on-site inspection by County assessors.

Dale Stockamp (10325 NW Coyner Avenue, Redmond), one of the owners of the subject property, began the presentation on behalf of the Applicant. He, along with his partners, Charles Thomas and Robert Turner, are all Deschutes County homeowners and have a passion and love for the central Oregon community. They have consulted technical and environmental experts to determine the best use for their property. They strive to increase the supply of desperately needed housing in the area while also balancing nature. They also pledge to contribute a portion of their proceeds to non-profits that serve the needs of Deschutes County.

Ken Katzaroff, counsel for the Applicant, continued the presentation. He clarified that none of the parcels on the subject property are in tax deferral. One parcel was denied tax deferral a couple of years ago. Applicant is seeking to develop low density housing with 71 homes on 710 acres. Applicant believes this proposal supports planning goals in that the Applicant can globally develop all 71 properties rather than 71 individually developed properties. He described the topographical challenges of the property. The property is a plateau and development of the plateau would have minimal impact on surrounding properties. The property contains predominantly Class VII and VIII soils, which essentially renders the property unsuitable for farming. The amount of inputs necessary to make it suitable for farm use is unreasonable. Grazing cannot be supported on this property, as it would be economically unfeasible. Even if the Applicant could obtain water to utilize the property for farm use, the water usage would be much higher for farm use than it would be for low-density residential development.

Wendy Wente, a wildlife biologist, with Mason Bruce & Girard, appeared on behalf of Applicant. She was hired by Applicant to review the habitat that was present on

the site and to evaluate the possible impacts that the proposed development may have on wildlife.

Commissioner Chang questioned how the County's future review of the wildlife overlays and mule deer winter range may impact future development. He inquired about the possibility of cluster development if the Applicant is authorized to proceed with rural residential development.

Mr. Katzaroff responded that the Applicant's proposed development is based on the WA zone as it stands today. At this time, the Applicant is not looking at cluster development because it is not currently required. However, the Applicant has been mindful of wildlife, and if it is overlaid with WA zone, then obviously the Applicant will comply with whatever is required.

Commissioner Chang stated he would look much more favorably on this application after the overlay was completed.

Commissioner Chang recognized that the hearings officer could only look at what was being applied for and was precluded from speculating about the development that might come out of this amendment and rezone approval. He further noted the traffic component of the hearings officer was fairly thin. He would like additional input from the Road Department regarding traffic impacts and possible comparable neighborhoods in the area.

Mr. Katzaroff recognized the Applicant had to address the traffic impacts for the proposed 71 homesteads. The Applicant does not believe there will be significant impacts or changes caused by the proposed development. Also, Mr. Katzaroff pointed out that the County has the opportunity to make additional modifications once the Applicant submits the subdivision application.

Chris Cuomo (2237 NW Torrey Pines, Bend) appeared on behalf of Applicant. He conducted the traffic report. There is only one access for this property, which is located on the south side. Once the Applicant submits the subdivision application, there may be additional requirements for access to the property. In his opinion, the current roadways can accommodate the traffic for this project.

Commissioner Adair called for comments from State agencies.

- Kyle Gorman (231 SW Scalehouse Loop, Bend), with the Oregon Department of Water Resources, opined that the area's aquifer could sustain in-home use for this development. Studies show that in-home use is substantially less than outdoor watering and a low-density residential development would have less impact than utilizing the subject property for agricultural purposes.

Commissioner Adair called for public testimony from those in the meeting room.

- Megan Martin (1961 SW Knoll Avenue, Bend) testified in support of the 710 Properties application. She has worked with the property owners and has personally visited the site. The property owners are not professional developers. In her opinion, the subject property is not suitable for agricultural purposes.
- Kim Campbell (9590 NW Teater Avenue, Terrebonne) has a concern with the potential increased water usage for this property if the rezone is approved. His well is currently low.
- Shelli Blais (9590 NW Teater Avenue, Terrebonne) opposes the rezoning of this property. She is concerned regarding the water usage for the proposed development. The wells at Big Falls Ranch have dropped 9 – 10 feet. She is also concerned regarding the increased traffic on Buckhorn Road. She cited to a hearings officer decision on an unrelated property from a number of years ago that held Lower Bridge Road could not support a 20-home subdivision. She finds it highly unlikely that if Lower Bridge Road could not support a 20-home subdivision then Buckhorn Road could not support a 71-home subdivision.
- Steve Reiff (70778 Bitter Root, Sisters) supports rezoning of this property. The evidence shows that it is not feasible for farming, and as such, it should not continue to be characterized as agricultural land.
- Matt Cyrus (16925 Green Drake Court, Sisters) is supportive of the application. He is a generational rancher and cited to guidelines utilized by BLM for its land in the area, wherein 561 acres is needed per cow for grazing purposes. By applying BLM's numbers to the subject property, the property could sustain 1 ¼ cattle. It does not appear economically feasible to utilize this property for livestock grazing.

- Commissioner Chang addressed differences between Applicant's AUM numbers and those cited by Mr. Cyrus. Mr. Cyrus believes the Applicant's AUM numbers are very generous and that the BLM AUM numbers are more site specific to the subject property.
- Rob Imhoff (20183 Fire Rock Road, Bend) supports the 710 Properties application. In his opinion, we need to accommodate our community's residential growth while balancing conservation. Given this particular property's limited use for agricultural purposes, he believes it is appropriate to rezone the property for a more feasible purpose that our community needs - low-density residential development.
- Brian Rabe (3511 Pacific Boulevard, Albany), with Valley Science & Engineering, testified regarding the soils report he prepared. He confirmed that his report does have generous AMU numbers but it is based on soil classifications across the County and is not site specific.
- Michael Sipe (64708 Alcor Place, Bend) is in support of the application. He is an environmental advocate. He personally knows the developers and has visited the property. The prior testimony and evidence presented regarding the condition of the property is accurate in that farm use is not feasible on this parcel. In his opinion, the proposed residential development is the highest and best use for the property.
- Billy Buchanan (10142 NW Coyner Avenue, Redmond) does not agree that rezoning the property for residential use is more feasible than an agricultural use. He has looked at the perimeter of the property and saw crested wheatgrass, which in his opinion could be utilized for grazing cattle.
- Elizabeth Buchanan (10142 NW Coyner Avenue, Redmond) testified that her and her husband own property that borders the subject property. They own a ranching business and need more dry land for their herd. She would be interested in leasing the land. She testified that by maintaining the land as EFU it would keep the land more affordable for ranchers, such as them.
- Carol McBeth, with Central Oregon Landwatch, testified in opposition to the application. She emphasized that water rights are available, albeit they may be expensive to acquire. She testified that absent irrigated farming there are other farm uses available, such as greenhouses and poultry raising, for land

with poor soil content. She also opined that the property requires Goal 3 approval, which it will not be able to obtain.

- Nunzie Gould (19845 JW Brown, Bend) is not supportive of the application. She testified that in her opinion there are a number of wildlife concerns that have not been addressed, such as the property's location in eagle territory and the need to contact NOAA Fisheries regarding the steelhead populations.
- Diane Lozito (PO Box 85, Terrebonne) is a realtor that once represented this property. She opposes the proposed development of this property and is concerned about water use.

Commissioner Adair called for public testimony from those attending via Zoom.

- Abby Kellner-Rode (25360 Walker Road, Bend) is not supportive of the application for rezoning. She opined that the subject property is agricultural land as a matter of law and is precluded from being rezoned.
- Deren Ash (52765 Howard Lane, La Pine) opposes the plan amendment and rezoning of this property. He requested the Commission limit urban sprawl and maintain growth in the UGB.
- Ryder Redfield (8801 NW 93rd Lane, Terrebonne) testified in opposition to the application. He currently manages 1200 acres along Lower Bridge, and it is his opinion that Lower Bridge is not suited for more people. The subject property's zoning needs to stay as EFU.
- Eugene Trahern (PO Box 2242, Sisters) opposes the application for a variety of reasons. He is concerned about increases in traffic, which he believes will increase by 4-5 times the current use. He testified regarding the impact on water use and the solar farm proposed by the development. He is also concerned about the light pollution caused by the increased population and the placement of the development at a higher elevation.
- Rima Givot (18557 McSwain Drive, Sisters) opposes the development. She is concerned about the increased water use if 71 homes were placed on the property. She further testified there is a possibility that some of these homes would be used as vacation homes, which would not address the housing

shortage. Additionally, in her opinion, increased residential development should be maintained in the UGB.

- Keenan Ordon-Bakalian (360 SW Bond Street, Suite 510, Bend), with Jordan Ramis, is the attorney for Redside Restoration Project One, LLC. His client, who has property near the northern border of the subject property, opposes this application. He testified that it is his opinion the law requires this land to stay as agricultural land. He recognizes that it will take work to render this property usable as farm land, but that is the challenge that other property owners also face. He also noted concerns with approving the rezone prior to the completion of the County's WA Zone updates.

Commissioner Chang agrees with the Applicant that the soil conditions and current water rights for this property are not suitable for irrigated crops, but lands like this property are utilized as ranches. He does not agree with the hearings officer's analysis that this land could not be seasonally grazed profitably. In his opinion, the livestock industry needs land to continue to make it viable.

The Board recessed at 4:46 p.m. and reconvened at 5:30 p.m. to continue the public hearing.

6. PUBLIC HEARING Continued: Eden Properties Plan Amendment and Zone Change

At 5:30 p.m. Commissioner Adair re-opened the hearing.

Associate Planner Haleigh King explained the hearing procedures.

Chair Adair called for in-person testimony. There was none.

Chair Adair called for Zoom testimony. There were no raised hands on Zoom.

Attorney Katzaroff presented rebuttal. Noted that issues associated with grazing and water use are fully addressed in the record, but that his written submission will further address same. Katzaroff expressed that COLW Attorney MacBeth's comments relative to capital assets was inaccurate as all expenses must be considered. He noted that neighbor Buchanan has had more than 6 years in which to attempt to purchase the subject site. Stressed that "other farm uses" are not viable since no ability to generate profit. Finally Katzaroff stated that the application and record fully address the issues raised in the state agencies written submission.

Commissioner Chang was curious as to tax impacts if the site were to qualify for farm deferral, and also how deep the 71 wells will need to be drilled.

Chair Adair then closed the oral portion of the hearing. The written record will remain open to allow for a requested Open Record Period, of 7-7-7. August 24th for initial period, August 31st for rebuttal period, and September 7th for applicant's final written argument.

The Board will deliberate at its meeting on September 28th.

ADJOURN: Being no further items to come before the Board, the meeting was adjourned at 6:02 p.m.

DATED this 31 Day of August 2022 for the Deschutes County Board of Commissioners.



PATTI ADAIR, CHAIR



ANTHONY DEBONE, VICE CHAIR

ATTEST:



PHIL CHANG, COMMISSIONER



RECORDING SECRETARY