



MEMORANDUM

TO: Deschutes County Board of Commissioners (Board)

FROM: Haleigh King, Associate Planner

DATE: August 28, 2024

SUBJECT: Deliberations – Remand of Eden Properties Plan Amendment and Zone Change – 247-24-000395-A (247-21-001043-PA, 1044-ZC)

The Board held a public hearing on July 24, 2024, to consider a remanded decision of the Oregon Land Use Board of Appeals, affirmed by the State Court of Appeals. The remanded decision is a request for a Plan Amendment and Zone Change (file nos. 247-21-001043-PA, 1044-ZC) for nine tax lots totaling approximately 710 acres to the west of Terrebonne and north of Highway 126. The Board is scheduled to deliberate on September 4, 2024 in consideration of the request.

I. BACKGROUND

The applicant, 710 Properties, LLC/Eden Central Properties, LLC, is requesting a Comprehensive Plan Amendment to re-designate the subject properties from Agriculture to Rural Residential Exception Area and a Zoning Map Amendment to rezone the properties from Exclusive Farm Use (EFU) to Rural Residential (RR-10). The subject property totals ±710 acres in size.

The application was originally approved by a Board majority on December 14, 2022 following a public hearing held on August 17, 2022, a subsequent open record period. Following Board approval, the application was appealed to the Oregon Land Use Board of Appeals (LUBA) and the Court of Appeals and was remanded back to the County for additional review on a number of specific issue areas discussed below. The remand was then initiated by the applicant for County review on June 26, 2024. The final day in which the County must issue a final decision is October 24, 2024.

II. OPEN RECORD PERIOD

Following the July 24, 2024 hearing, the written record was left open for a total of 28 days consisting of the following: 14 days for New Evidence and Testimony, seven (7) days for Rebuttal, and seven (7) days for Applicant’s Final Legal Argument.

During the initial 7-day segment of the 28-day open record period, staff received 27 public comments, including the applicant’s submittal which included Exhibit Nos. 48 to 75, as new evidence and

testimony. During the second 7-day segment of the open record period, staff received four (4) rebuttal responses to the new evidence and testimony that was received, including the applicant's submittal which included Exhibit Nos. 76 to 111. The Applicant's final legal argument was received on August 21, 2024, at the conclusion of the open record period and includes Exhibit Nos. 111-115.

The new evidence and testimony received during the open record largely reiterated concerns and arguments that were raised during public testimony of the Board's public hearing on July 24, 2024. During this first open record period, Staff received an agency comment from Department of Land Conservation and Development (DLCD) restating their concerns with the application and referencing their original April 19, 2022 letter to be reentered into the record. Other concerns include, but are not limited to, impacts to wildlife, impacts to groundwater and aquifer levels, future potential development of the subject property, traffic impacts, and the validity of the applicant's argument regarding the property's suitability for farm use, as defined by state statute.

The rebuttal testimony received during the open record period largely reiterated concerns and arguments that were raised during public testimony and during the first open record period including, but are not limited to, traffic impacts on surrounding farm operations, water impacts, general land use compatibility, and the subject property's qualifications as agricultural land, or lack thereof.

III. BOARD DELIBERATIONS

On September 4, 2024 the Board will deliberate on the remanded Plan Amendment and Zone Change requests. If the Board finds that additional deliberations are necessary, the Board may schedule a future date for continued deliberations. Due to the limited time to process the remand application, Staff will include a placeholder for this item on the September 16, 2024 Board agenda if the Board chooses to continue deliberations. If the Board finds no additional deliberations are necessary, the Board may vote the application.

Board Decision Matrix

Staff has provided a decision matrix summarizing the issue areas, and information from the open record period and previous public hearings as an attachment to this memorandum. As identified on the decision matrix, there are decision points for the Board to determine whether issues areas have been sufficiently addressed.

IV. NEXT STEPS

If the Board determines that additional deliberations are necessary, staff will include a place holder for this item on the September 16, 2024 agenda. If the Board concludes their deliberations during the September 4, 2024 meeting, the Board may then vote on whether to approve or deny the Plan Amendment and Zone Change. If the Board renders a vote during the September 4, 2024 or any future meeting, staff will coordinate with the Board to return for a future meeting to review the draft decision, draft ordinance and relevant exhibits. If appropriate, the first reading of the ordinance can be initiated at that time.

V. MOTION

To the extent the Board decides to approve the Plan Amendment and Zone Change, a motion as follows will likely be appropriate:

The Board moves to approve the remanded Plan Amendment and Zone Change for file nos. 247-24-000395-A, 247-21-001043-PA, and 247-21-001044-ZC.

To the extent the Board decides to deny the Plan Amendment and Zone Change, that motion will need to be crafted to address the Board's specific concerns, as discussed in the deliberations.

VI. RECORD

The record for File Nos. 247-24-000395-A (247-21-001043-PA, 1044-ZC) are as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/luba-remand-247-24-000395-247-21-001043-pa-and-247-21-001044-zc-eden-central-properties>

ATTACHMENTS:

- 1) Board Decision Matrix