



MEMORANDUM

TO: Board of County Commissioners

FROM: Audrey Stuart, Associate Planner

DATE: January 16, 2024

RE: Consideration of whether to initiate review of a Plan Amendment/Zone Change request; Land use file nos. 247-23-000547-PA, 247-23-000548-ZC.

On January 31, 2024, the Board of County Commissioners (“Board”) will consider whether to initiate review of a Hearings Officer’s approval of a Comprehensive Plan Amendment and Zone Change, for a 65-acre parcel located south of Bend.

I. SUBJECT PROPERTY

The subject property does not have an assigned address and is located across Knott Road from the Bend Urban Growth Boundary. Neighboring properties to the east, south, and west are zoned Multiple Use Agricultural, and neighboring properties to the north include Caldera High School and urban development within the Bend city limits.

The property is zoned Surface Mining (SM) and is undeveloped. The property previously contained a cinder cone, and two pits on the property were mined beginning in the late 1940’s. Mining on the property has since ceased and the state permit for this mine site was closed out in 1998. No other uses have been established on the subject property.

II. PROPOSAL

The Applicant requests a change in the Comprehensive Plan designation, from Surface Mine to Rural Residential Exception Area. The Applicant also requests a concurrent change in the zoning designation, from SM to MUA10. No development or new uses are being reviewed as part of this application. The applicant argues the mineral resources on the subject property have been mined to the extent they are no longer a significant Goal 5 resource. In support of this, the applicant provided a Geotechnical Reconnaissance report prepared by a professional engineer, which details the remaining mineral resources on the property.

A staff report was mailed on November 7, 2023, and staff found the proposal complied with all applicable provisions of Deschutes County Code, Deschutes County Comprehensive Plan policies, and Statewide Planning Goals. A public hearing was held before a Hearings Officer on November 13, 2023, and a Hearing's Officer decision approving the application was mailed on January 10, 2024. As described below, the Board may decide to either adopt the Hearing's Officer decision or initiate review of the decision.

III. PUBLIC COMMENTS

Five members of the public submitted written comments on this application, including Central Oregon LandWatch. Four members of the public submitted comments in opposition and one member of the public submitted neutral comments. These comments generally included questions about the future use of the property, environmental concerns, concerns about increased density, and questions about whether the property qualifies as agricultural land. Two members of the public attended the Hearings Officer hearing on November 13, 2023.

Comments from the Department of Geology and Mineral Industries (DOGAMI) indicate they do not have any concerns with the proposal. Comments received from other public agencies also did not express any concerns.

IV. BOARD OPTIONS

Pursuant to DCC 22.28.030(B), the Board shall adopt the Hearing's Officer decision unless an appeal is filed or the Board initiates review of the application. Under DCC Title 22, the Board is only required to hold their own hearing when a Plan Amendment and Zone Change application involves an exception to a Statewide Planning Goal or involves land that is designated for forest or agricultural use. In this instance, neither of those conditions apply and the Board is therefore not required hear this application.

Reasons not to hear

Members of the public received a mailed Notice of Application and Notice of Public Hearing and were provided an opportunity to submit testimony. There was a 21-day open record period following the November 13, 2023, hearing, and the Hearings Officer decision responded to all comments received. Many of the comments received were not directed at applicable approval criteria and raised concerns about potential future uses of the property, which are not being reviewed through this application. The Applicant provided property-specific technical reports, the findings of which were not contested.

Staff and the Applicant generally concur with the Hearings Officer decision and there do not appear to be any interpretive issues that would benefit from further review. The Hearings Officer decision provided a thorough analysis and could be supported, as the record exists today, on appeal to the Land Use Board of Appeals.

Reasons to hear

The Board may want to take testimony and make interpretations relating to the Hearings Officer's decision. The Board may also want to reinforce or refute some or all of the decision findings/interpretations prior to Land Use Board of Appeals review. Several members of the public provided testimony in opposition, and the Hearings Officer found that many issues raised in objection were not directed at approval criteria. The Board may choose to modify those findings and provide additional analysis in response to concerns raised by members of the public. Finally, the Board may want to offer additional opportunities for public testimony by holding a new public hearing.

If the Board decides the Hearings Officer's Decision shall be the final decision of the county, then the Board shall not initiate review. Staff will then return to the Board for a first and second reading of a draft Ordinance approving the subject Comprehensive Plan Amendment and Zone Change.

V. STAFF RECOMMENDATION

The Hearing's Officer decision was well-reasoned and aligned with staff's analysis of the application materials. Staff does not have any concerns with the Hearing's Officer decision and therefore recommends the Board decline to initiate review.

VI. 150-DAY LAND USE CLOCK

Pursuant to DCC 22.20.040(D)(1), the subject application is exempt from the 150-day land use clock.

VII. RECORD

The record for File Nos. 247-23-000547-PA, 247-23-000548-ZC are as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-23-000547-pa-247-23-000548-zc-miller-pit-llc-comprehensive-plan-amendment-and-zone>

Attachments:

1. Location Map
2. Hearing's Officer Decision for file nos. 247-23-00547-PA, 247-23-000548-ZC
3. Staff Report for file nos. 247-23-000547-PA, 247-23-000548-ZC