



MEMORANDUM

TO: Board of County Commissioners

FROM: Haleigh King, Associate Planner

DATE: September 20, 2023

RE: Consideration to Hear on Appeal – Deschutes County Land Use File Nos. 247-23-000149-CU, 23-150-SP, 23-151-LR, 23-152-AD, 634-RC; Redmond Wetlands and Sanitation Complex

On September 27, 2023, the Board of County Commissioners (Board) will consider whether to hear an appeal of a Hearings Officer’s decision (ref. File Nos. 247-23-000149-CU, 23-150-SP, 23-151-LR, 23-152-AD, 634-RC) approving a series of land use applications to facilitate the establishment of the Redmond Water Pollution Control Facility Effluent and Biosolids Disposal Complex (“Redmond Wetlands Complex”).

I. BACKGROUND AND PROCEDURAL HISTORY

On August 8, 2023, the Hearings Officer issued a tentative approval for the subject applications. Braedi Kolberg, the appellant, filed a timely appeal of the Hearings Officer’s approval on August 21, 2023. The applicant, City of Redmond, also filed a Reconsideration on August 21, 2023. Pursuant to Deschutes County Code Chapter 22.30, the Reconsideration process must occur first and the appeal is stayed pending outcome of the Reconsideration.

The Hearing’s Officer found the Reconsideration application had merit and issued a modified Findings and Decision on September 13, 2023. The modified decision eliminates Condition Q from the original Hearing Officer’s decision. A 12-day appeal period follows ending on September 23, 2023. As of the date of this memo, an appeal of the Reconsideration decision has not been received. The appeal originally filed by Ms. Kolberg remains pending and is before the Board for its consideration of whether to hear that appeal.

II. PROPOSAL

The subject applications will allow for the establishment of an Effluent and Biosolids Disposal Complex (“utility facility necessary for public service”) to serve land inside the Redmond urban growth boundary to accommodate wastewater and sewage treatment, storage, and disposal for its growing population. State statute also allows the system to serve land inside a nearby unincorporated community. The scope also includes the replacement of an existing 24-inch diameter interceptor pipeline with a 48-inch diameter pipeline that will be below grade and within established utility easements and/or public rights-of-way on an approximately two (2) mile route to the City of Redmond to connect to existing facilities treatment facility at the north end of Dry Canyon.

III. KOLBERG APPEAL

Ms. Kolberg, represented by Steven G. Liday, requests the Board review the Hearing Officer’s decision on appeal to address the following summarized issues:

- Size and impact of development
- Important policy concerns including preemption of local code, preferential treatment for projects by municipal bodies, applicable standards for protection of county farmland.
- Potential reversal by Oregon Land Use Board of Appeals (LUBA).

The appellant did not specify whether *de novo*, limited *de novo*, or an on-the-record appeal was sought. The appellant requests the Board waive the transcript requirements outlined in DCC 22.32.024(D).

V. STAFF RECOMMENDATION

Staff notes the Board has contributed \$1 million dollars in American Rescue Plan Act (ARPA) funds to the sanitary complex expansion. Therefore, based on these financial contributions, the Board cannot sit as a neutral decision-making body on the appeal and should decline review.

Furthermore, staff notes the Hearings Officer’s Decision could be supported, as the record exists today, on appeal to LUBA. Both parties were well represented by land use consultants and/or attorneys. Lastly, the issues are a matter of statewide importance since they are regulated under State law; the Board may not be granted deference if appealed to LUBA.

For these reasons, Staff, in coordination with Legal Counsel, recommends the Board decline to hear the appeal.

IV. BOARD OPTIONS

There is one version of Order No. 2023-038 attached to this memo; to decline to hear the appeal. In determining whether to hear the appeal, the Board may consider only:

1. The record developed before the Hearings Officer;
2. The notices of appeal; and
3. Recommendation of staff¹

If the Board decides that the Hearings Officer's Decision shall be the final decision of the County, then the Board shall not hear the appeal and the party appealing may continue the appeal as provided by law. The decision on the land use application and associated appeals becomes final upon the mailing of the Board's order to decline review.

VI. 150-DAY LAND USE CLOCK

The 150th day on which the County must take final action on this application is November 11, 2023.

VII. RECORD

The record for File Nos. 247-23-000149-CU, 23-150-SP, 23-151-LR, 23-152-AD, 23-634-RC and the Notices of Appeal for Appeal No. 247-23-000632-A are as presented at the following Deschutes County Community Development Department website:

www.deschutes.org/redmondwetlandscomplex

Attachments:

1. DRAFT Board Order 2023-038 Declining Review of the Hearings Officer's Decision
2. Notice of Appeal (Appeal No. 247-23-000632-A)
3. Hearing's Officer Decision (File No. 247-23-000149-CU, 23-150-SP, 23-151-LR, 23-152-AD)
4. Hearing's Officer Reconsideration Decision (File No. 247-23-000634-RC)

¹ Deschutes County Code 22.32.035(D)