



MEMORANDUM

TO: Board of County Commissioners

FROM: Audrey Stuart, Associate Planner

DATE: February 21, 2023

SUBJECT: March 1st Deliberations for Marken Plan Amendment and Zone Change

The Board of County Commissioners (“Board”) held a public hearing on January 18, 2023, to consider a request for a Comprehensive Plan Amendment and Zone Change (file nos. 247-22-000353-PA, 354-ZC) for two tax lots totaling approximately 59 acres, to the east of Bend and south of Highway 20. The Board is scheduled to deliberate on March 1, 2023, in consideration of this request.

I. BACKGROUND

The applicant and property owner, Harold Marken, is requesting a Comprehensive Plan Amendment to re-designate the subject property from Agriculture to Rural Residential Exception Area, and a Zoning Map Amendment to rezone the property from Exclusive Farm Use – Tumalo-Redmond-Bend subzone (EFU-TRB) to Multiple Use Agricultural (MUA-10). The applicant argues that the subject property does not meet the definition of “agricultural land” due to its poor soil quality, and previous attempts to engage in farm use on the property were unsuccessful. For these reasons, the applicant states a mistake was made when the property was originally zoned and MUA-10 zoning is more appropriate.

The applicant provided a supplementary soil study that identifies non-high value (Class VII and VIII) soils on a majority (61.2%) of the subject properties. Additionally, the applicant provided a traffic study, and findings within the burden of proof that demonstrate compliance with state and local requirements and policies.

A public hearing was held before a Hearings Officer on September 6, 2023. On November 7, 2022, the Hearings Officer issued a recommendation of approval for the proposed Plan Amendment and Zone Change evaluating compliance with all applicable review criteria. The second required public hearing was held before the Board on January 18, 2023.

II. PUBLIC COMMENTS

Seven written comments were submitted in advance of the September 6, 2022, hearing before the Hearings Officer; of these, five were in opposition to the applications, one was neutral, and one was in support. Two members of the public testified in opposition to the applications at the public hearing. During the subsequent open record period, one written comment was submitted by a surrounding property owner and additional materials were submitted by Central Oregon LandWatch.

Comments in opposition to the applications expressed concerns regarding impacts to wildlife, increased housing density, preservation of agricultural properties, loss of neighborhood character, inconsistencies with local Code and state law, and efforts to put the subject property to farm use. The one neutral written comment inquired about adding additional land to the subject applications. The comment received in support of the applications addressed the minimal impacts to nearby agriculture, and poor soil quality of both the subject property and surrounding area.

Following the Board hearing on January 18, 2023, public comments were submitted by Central Oregon Land Watch and one member of the public in opposition. The applicant then submitted a rebuttal argument and a final legal argument. The open record period for the Board hearing was closed on February 8, 2023.

III. BOARD DELIBERATIONS

If the Board finds that additional deliberations are necessary, the Board may schedule a future date for continued deliberations. If the Board finds no additional deliberations are necessary, the Board may then vote on whether to approve or deny the Plan Amendment and Zone Change request.

Per DCC Section 22.20.040(D), the review of the proposed quasi-judicial Plan Amendment and Zone Change is not subject to the 150-day review period typically associated with land use decisions. The full record is available for inspection at the Planning Division and at the following link: <https://www.deschutes.org/cd/page/247-22-000353-pa-and-247-22-000354-zc-marken-comprehensive-plan-amendment-and-zone-change>

Board Decision Matrix

Staff prepared a matrix outlining key issue areas for the Board's deliberation. This matrix is included as an attachment, and provides additional review and discussion of the application's compliance with applicable approval criteria.

IV. NEXT STEPS

If the Board determines that additional deliberations are necessary, staff will work with the Board to schedule a future meeting for continued deliberations. If the Board concludes their deliberations during the March 1, 2023, 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 March 1, 2023, 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. SUGGESTED MOTION

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

The Board moves to approve the Plan Amendment and Zone Change for file nos. 247-22-000353-PA and 247-22-000354-ZC.

To the extent the Board decides to modify or reverse the Hearings Officer's decision, that motion will need to be crafted to address the Board's specific concerns, as discussed in the deliberations.

Enclosures: Area Map
Board Decision Matrix
Hearings Officer Recommendation