



Crook County Community Development
Planning Division
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BEFORE THE CROOK COUNTY PLANNING COMMISSION
STAFF REPORT for ZONE MAP AMENDMENT
217-24-000126-PLNG

Date: October 16, 2024

Applicant: Martin Neumueller
11367 SW Doris Lane
Powell Butte, OR 97753

Agent: Kilpatrick Consulting LLC
Attn: Craig Kilpatrick
13790 NW O'Neil Hwy
Redmond, OR 97756

Subject Property: Tax Lot: 1614110000700

I. PROPOSAL

The Applicant proposes to amend the Crook County Zone Map to rezone approximately 40 acres from Exclusive Farm Use Zone, EFU-3 (Powell Butte area) to Rural Residential, R10.

II. BASIC FINDINGS

A. Location

The subject property is located on Doris Lane in Powell Butte, approximately 3 miles south of Highway 126. The address is 11367 SW Doris Lane. It is identified on the County Assessor's maps as map tax lot number 1614110000700. The entirety of the property is proposed to be rezoned to R10.

B. Site Characteristics

The subject property is listed as forty (40) acres with the Crook County Assessor's office. There is an existing single family dwelling and accessory structures on the property. The property is not in farm use and not located within an irrigation district. The Applicant describes the property as

having a gentle to moderately sloping terrain that is covered in native grasses, brush and Juniper trees.

C. Access

The Subject Property has access via existing easements on Doris Lane and Harrison Way to Reif Rd. The Applicant has provided a recorded access agreement MF237279, which includes road maintenance for Doris Lane.

D. Other Information

There are no mapped natural hazards on the subject property. The property is not in a mapped special flood hazard area. Exhibit one (1) from an adjoining property owner has expressed concern regarding run off from Powell Buttes during storm events. At this time, the application is for a zone change only. There is a mapped riverine on the property, which would be addressed at the time of development.

E. Public Comment

At the September 11, 2024, public hearing a request was made to leave the record open for additional comment. The Planning Commission voted to continue the hearing for deliberations only to October 23, 2024. The record was open for additional comment until October 2, 2024, at 4pm; no additional comment or materials were submitted. The record was open for rebuttal submissions until October 9, 2024, at 4 pm; no rebuttal testimony was received. The Applicant's final argument was open for submittal until October 16, 2024, at 4pm; no final argument was received.

Exhibit one (1) was received and included in the initial staff report, from a neighboring property owner sharing interest in rezoning their property and concern regarding storm water runoff. This request is for a zone change only. At the time of subdivision and development, storm water runoff will be addressed.

The application and materials brought forth by the Applicant before the Planning Commission are being reviewed against the applicable County and State criteria. Any privately held CC&Rs or other recorded items are a civil matter.

III. Applicable Criteria:

Crook County Code:

Title 18, Chapter 18.12 Establishment of zones, Boundaries

Section 18.12.020 Location of Zones, lists zones established in Crook County

Section 18.12.030 Zoning Map. Map is amended by authority of the Planning Commission

Title 18, Chapter 18.92 Rural Residential Zone, R-10, describes zone requirements

Title 18, Chapter 18.170 Quasi-Judicial Amendments

Section 18.170.010 Quasi-Judicial amendment standards

Title 18, Chapter 18.172 Administration Provisions

Section 18.172.010 Quasi-judicial hearing authority

Section 18.172.010 Application

Section 18.172.010 Notice of Public Hearing

Crook County Comprehensive Plan

Crook County Ordinance 127, Amendment 1

IV. FINDINGS

Title 18, Chapter 18.12 Establishment of zones, Boundaries

18.12.020 Location of Zones

The boundaries of the zones listed in this title are indicated on the Crook County zoning map, which is hereby adopted by reference. The boundaries shall be modified in accordance with zoning map amendments, which shall be adopted by reference.

Proposed Finding: The Applicant is requesting a rezoning to an established zone indicated on the Crook County zoning map, which is Rural Residential, R-10. Crook County Code Title 18, Chapter 18.92.

18.12.030 Zoning Map.

A zoning map or zoning map amendment adopted by CCC [18.12.020](#) or by an amendment thereto shall be prepared by authority of the planning commission or be a modification by the county court of a map or map amendment so prepared. The map or map amendment shall be dated with the effective date of the ordinance that adopts the map or map amendment. A certified print of the adopted map or map amendment shall be maintained in the office of the county clerk as long as this title remains in effect.

Proposed Finding: Map is amended by authority of the Planning Commission. The subsequent Ordinance shall be recorded with an attachment of the amended zone and maintained in the office of the County Clerk.

Title 18, Chapter 18.170 Quasi-Judicial Amendments

18.170.010 Quasi-judicial amendment standards.

An applicant requesting a quasi-judicial amendment must satisfy the following factors for quasi-judicial amendments:

(2) Zone Map Change.

(a) That the zone change conforms with the Crook County comprehensive plan, and the change is consistent with the plan's statement and goals.

(b) That the change in classification for the subject property is consistent with the purpose and intent of the proposed amendment.

Proposed Finding: The subject property is currently zoned Exclusive Farm Use Zone, EFU-3 and has been designated as Irrevocably Committed to use other than exclusive farm use, through the adoption of the Powell Butte Study Policies into the County's Comprehensive Plan. Page one of the Burden of Proof states:

"The Subject Area 2-4 presently consists of thirty-eight parcels, one of which is included in this proposal. Nine parcels were approved for re-zoning in 2005 (Umbarger). Seven parcels were approved for re-zoning in 2009 (Doris Lane Neighbors). The remaining parcels have not been included because; a) they are too small to meet the minimum allowable size, 10 or 20 acres depending on specific location, b) they are too small and/or presently have dwellings, therefore no benefit would occur from a change of zone, c) the owners, while asked, have expressed no interest in participating in this effort or sharing the prerequisite costs."

The area of Powell Butte is addressed in the Comprehensive Plan as referenced and explored through the Powell Butte Study. There were multiple adopted ordinances, amendments, and policies associated with this area. The requested zone change conforms with the policies (as have been enacted) established by the study as well as consistent with the intent of the proposed amendment to have the property rezoned as it was included in Area 2-4 recorded in Ordinance 127, Amendment 1.

(c) That the amendment will presently serve the public health, safety and welfare considering the following factors:

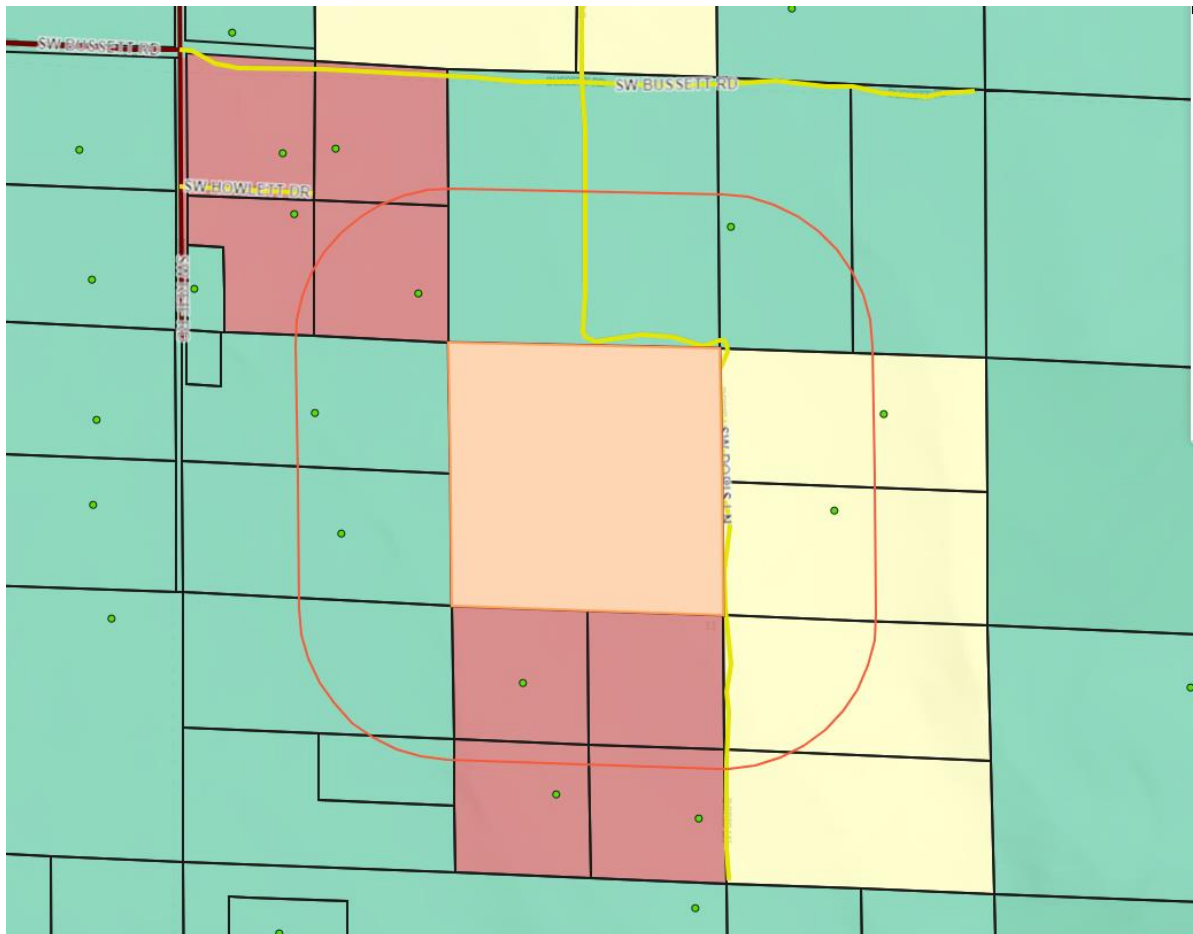
(i) The availability and efficiency of providing necessary public services and facilities.

Proposed Finding: The availability and efficiency of public services and facilities will be addressed at the time the property is divided and/or subsequently developed. The subject property is currently served with access easements and power. Wells are the subject of Oregon Water Resources, and the property has an approved onsite system for septic.

(ii) The impacts on surrounding land use will be consistent with the specific goals and policies contained within the Crook County comprehensive plan.

Proposed Finding: The area surrounding the subject property was included in the Powell Butte Study as area 2-4. Attachment C is a map showing the 2-4 area as it was designated in Ordinance 219, Amendment 1. Staff has reviewed twenty-two properties surrounding the subject property, ten (10) of which are zoned EFU3; three (3) have approved nonfarm dwellings; one (1) is for tax lot purposes only; and two are owned by Crook County, location of the Powell Butte Cemetery. The remaining 12 have already been rezoned either Powell Butte Residential, PBR20 or Rural Residential, R10. Figure 2 (below)¹ is a visual representation of the surrounding area. The green coloring is zoned Exclusive Farm Use Zone, EFU-3, the yellow is Powell Butte Residential 20, PBR20, and the red is zoned Rural Residential, R10. The small green circles are residential addresses.

Figure 2



¹ Figure 2 prepared via Crook County GIS.

(d) That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.

Proposed Finding: The request is to rezone the property to a R10 designation as was recorded in Ordinance 127, Amendment 1. The rezoning is optional for property owners. The property was included in the adopted area 2-4 for rezoning through the Powell Butte study as Irrevocably Committed to uses other than exclusive farm use which was the previous zoning of EFU3.

V. PROCEDURAL STATUS

The Applicant submitted an application for this map amendment on May 29, 2024. The application was deemed complete on June 29, 2024. The Planning Commission is tasked with making a decision of approval or denial for the proposed Zone Map Amendment as outlined in CCC18.172.010.

The Planning Commission's first evidentiary hearing for this request was held on September 11, 2024. The required Post Acknowledgement Plan Amendment notice was sent to the Department of Land Conservation and Development on July 24, 2024 (DLCD File No. 002-24). Newspaper notice of the first evidentiary hearing was published in the Central Oregonian on August 20, 2024. Neighbor notice of the first evidentiary hearing was mailed on August 22, 2024. A continuance was requested at the September 11, 2024, hearing to a date and time certain for deliberations only of October 23, 2024.

VI. Comprehensive Plan/Powell Butte Study

A. Powell Butte Study, Crook County Comprehensive Plan

The Comprehensive Plan includes a summary of the Powell Butte Study which identified lands in the Powell Butte area that were approved through the exceptions process. There were a number of policies that were adopted into the Comprehensive Plan, however as the mandate for periodic review of County Comprehensive Plan stopped, the implementation for some of the adopted policies did not happen. Language from the Comprehensive Plan is below.

"In 1997 and 1998, the County commissioned a general study of the Powell Butte area in southwestern Crook County. The result of that study was the adoption of a series of amendments to the Comprehensive Plan in Ordinances No. 126, 127, 128, 130, 131, 132, 133, and 134, as individual sections of the Powell Butte area were redesignated from Exclusive Farm Use to other land uses through the exceptions process. These amendments were challenged in the Land Use Board of Appeals by interested parties and the Land Use Board of Appeals remanded a number of the ordinances back to the County for further work. This resulted in a number of minor amendments, including Ordinance No. 127, Amendment #1; Ordinance No. 131, Amendment #1; Ordinance No. 132, Amendment No. 1; Ordinance No. 133, Amendment #1, which resulted in the outright appeal of Ordinances No. 131, 133, and 134, and some modified policies governing the Powell Butte area which are reproduced below.

The following policies are adopted as a part of the Crook County Comprehensive Plan. These policies supplement and amend the Powell Butte Study to the extent that the Study is inconsistent with these policies and the Agreement. To the extent that there is any conflict between the Study and these policies or the Agreement, the Study shall automatically be modified to the extent necessary to conform the Study with these policies and the Agreement.

*1. The Comprehensive Plan as amended provides that rural residential and nonresource development shall occur south of Highway 126 and generally north of Powell Buttes, and west of Stillman Road and east of Study Area 2-2. **[Subject property meets this policy]***

*The specific areas to be reclassified and rezoned are those areas designated as Areas 1-2, 2-1 (as amended), 2-2 (as amended), 2-3 (as amended), and 2-4 (as amended). These areas are specifically described in Ordinances 126 (Area 2-3); 127 (Area 2-4); 128 (Area 2-1); 130 (Area 1-2); and 132 (Area 2-2). The land contained within these areas is hereinafter referred to as “the Area to be rezoned.” **[Subject property meets this policy]***

*Except of uses permitted outright and by conditional use in the EFU-3 Zone, other lands shall be maintained as exclusive farm uses consistent with Policy 2 below. Rezoning of land other than “the Area to be rezoned” are inconsistent with the Comprehensive Plan. In this regard, Ordinances 131 (Area 1-1) and Ordinance 133 (Area 3-1) are repealed by separate ordinances because the rezoning of that land is inconsistent with this provision of the Comprehensive Plan. Ordinance No. 134 which pertains to Area 3-2 is being repealed as that area is being reserved for the City of Prineville’s future industrial growth. **[NA]***

*2. The County will not initiate additional exceptions or nonresource designations within the Powell Butte Study Area until the next periodic review. The foregoing does not create an expectation that rezonings will necessarily occur at the next periodic plan review and does not create an obligation on the part of the County to rezone any EFU land at any time. The County may, however, consider a proposal(s) to expand the urban growth boundary of the City of Prineville in conjunction with an annexation into Area 3-2 for the purpose of providing an adequate supply of industrial land prior to the next periodic review. **[NA]***

*3. The land north of Highway 126 shall be retained as exclusive farm use as that land is composed of large parcels and contains less rural residential development than the area south of the highway. For the purpose of this policy, all of Area 1-2 is deemed to be located south of the Highway 126, notwithstanding that a small portion of Area 1-2 is physically located to the north of that Highway. **[NA]***

*4. The County shall adopt a new rural residential zoning district for Area 2-3 which imposes a minimum lot size and density consistent with Section Two of this Ordinance. **[NA]***

*5. The zoning ordinance for Area 2-3 shall contain a 250-foot setback requirement from adjacent exclusive farm use zoned land. **[NA]***

This setback shall not apply when the adjacent land is owned by a governmental entity, e.g. the Bureau of Land Management, or is adjacent to land already approved for non-farm use. [NA]

In those cases, the minimum setback shall be the setback already established for dwellings in an EFU zone or if no such setback has been established, then the setback shall be and hereby is established as one hundred (100) feet. [NA]

The 250 foot setback shall be adopted simultaneously with adopting the new zoning ordinance. If the imposition of this setback makes land undevelopable, then Crook County shall require the maximum achievable setback. [NA]

The County shall investigate declaring an ordinance violation to be a “nuisance” thereby allowing a private party to bring suit enforcing the county’s ordinance provisions. [NA]

6. The County shall require, as a condition of development approval, that all new rural residential development in the Powell Butte area pay system development charges (SDC’s) necessitated by Powell Butte rural residential development. The County currently funds road improvements from the earnings it receives from invested timber receipts. Prior to using property tax receipts for road improvements, the County shall adopt SDC’s sufficient to cover one hundred percent (100%) of the applicable road capital improvements required to support new rural residential development in Powell Butte.

In this regard, the County shall promptly adopt a system development charge ordinance to assess a road system development charge on new development. The amount of this system development charge shall be sufficient to recover a significant portion of the capital costs of road improvements required as a result of rural residential development in Powell Butte. Nothing in this ordinance shall preclude the County from applying system development charges to other classes of property or in other areas of Crook County. In the event that a developer desires to proceed with development prior to the adoption of the system development charge ordinance, he or she shall pay the sum of \$2,000 per single family dwelling at the time of building permit issuance. In the event that the adopted system development charge is less than \$2,000, the difference shall be refunded to the developer without interest. In the event that the adopted system development charge exceeds \$2,000, the developer shall be obligated to pay the difference. [policy not implemented]

7. The County shall comply with the transportation planning rule when it adopts the zoning ordinances. [The adopted Transportation System Plan adheres to the transportation planning rule]

8. The zoning ordinances shall require developers to execute covenants of nonremonstrance in respect to all farm operations in favor of adjacent EFU land. These covenants shall be in the form of equitable servitudes and shall be binding on all heirs, devisees, legatees, vendees, and successors in interest of the developers. The County shall require such covenants to be executed and recorded at the time the building permit is

issued. [This will be a condition of approval for any subdivision of the parcel and upon development]

9. The County will develop its zoning and land development ordinances utilizing the Gannet Study ("Groundwater Availability In The Powell Buttes Area, Central Oregon" Groundwater Report No. 32) recommendations on accessibility of groundwater in the Powell Butte Areas, and will require access to the regional water supply as a condition of development, or use of water from a district or public utility. Private exempt wells in existence prior to March 1, 2000 shall be exempt from the requirements contained in the zoning and land development ordinances pertaining to wells." (pages 66-69) [This provision is currently codified in the PBR20 zone only.]

VII. CONCLUSION

Staff requests the Planning Commission determine if the Applicant has met the burden of proof necessary change the zoning of the subject property from Exclusive Farm Use to Rural Residential, R10, through effectively demonstrating compliance with the applicable criteria.

Respectfully submitted:



Katie McDonald, Sr. Planner

Attachments

- A. Vicinity Map
- B. Crook County Ordinance No. 127 and Amendment No. 1
- C. Powell Butte Study of Area 2-4