



Deschutes County Board of Commissioners
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AGENDA REQUEST & STAFF REPORT

For Board Business Meeting of Nov. 23, 2015

DATE: November 3, 2015

FROM: Peter Russell CDD (541) 383-6718

TITLE OF AGENDA ITEM:

Continuation of Oct. 28, 2015, Board public hearing on Ord. 2015-007, an ordinance amending the Deschutes County Comprehensive Plan to add an Exception to Statewide Planning Goal 11 (Public Facilities and Services) to allow for sewers in unincorporated lands in southern Deschutes County; amend the Newberry Country Plan to not allow for upzoning; and amend the Deschutes County Comprehensive Plan map to indicate the affected tax lots.

PUBLIC HEARING ON THIS DATE? YES.

BACKGROUND AND POLICY IMPLICATIONS:

At the October 28 public hearing the Board requested staff from the County and co-applicants Department of Environmental Quality (DEQ) and Department of Land Conservation and Development (DLCD) assess if the language for the Goal 11 Exception could modify or remove the reference to a public health hazard. After careful analysis of the intent and plain language of Oregon Administrative Rule (OAR) 660-011-0060, the language pertaining to the reasons and justification of the Goal 11 Exception cannot be modified.

FISCAL IMPLICATIONS:

None.

RECOMMENDATION & ACTION REQUESTED:

Receive the update from staff and accept public testimony then set a date certain to continue the public hearing and/or begin deliberations.

ATTENDANCE: Peter Russell.

DISTRIBUTION OF DOCUMENTS:

Peter Russell



Community Development Department

Planning Division Building Safety Division Environmental Soils Division

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(541)388-6575 FAX (541)385-1764
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TO: Board of County Commissioners

FROM: Peter Russell, Senior Transportation Planner

DATE: November 23, 2015

SUBJECT: Public hearing on Ordinance 2015-007 (Planning File 247-15-000308-PA), which would amend the Deschutes County Comprehensive Plan to add an exception to Goal 11 (Public Facilities and Services) to allow for sewers in unincorporated lands in southern Deschutes County; amend language to Newberry Country Plan to prevent upzoning; and add a Goal 11 map indicating affected tax lots

BACKGROUND

The Board held an Oct. 28, 2015, public hearing in Sunriver to receive public testimony on Ordinance 2015-007. At the conclusion of the public testimony, Board requested staff to review whether the language regarding a public health hazard as the reason for the Goal 11 Exception could be modified or removed. The Board then continued the hearing until Nov. 23, 2015.

UPDATE

Department of Environmental Quality (DEQ) and Department of Land Conservation and Development (DLCD) staff reviewed the intent and language of Oregon Administrative Rule (OAR) 660-011, (Public Facilities Planning) and especially OAR 660-011-0060 (Sewer Service to Rural Lands) as well as the proposed findings. OAR 660-011-060(9) refers to an "imminent" public health hazard. DEQ and DLCD have recognized residents' and property owners' concerns about the OAR language by using the phrase "not imminent, but inevitable" when justifying the Goal 11 Exception. However, based on the intent and plain language in OAR 660-011 the references to public health cannot be further modified or eliminated. The attached Nov. 10, 2015, letter from Erik Nigg (DEQ) and Jon Jinings (DLCD) provides further context.

Staff has included the Newberry Country Plan (minus technical appendices) to show the public health aspects are not highlighted in that plan. Rather, the topic of high groundwater and public health will be relegated to the Exception Statement section of the Deschutes County Comprehensive Plan.

NEXT STEPS

The Board will open the continued public hearing and receive public testimony. At the conclusion of the testimony the Board has several options:

- Continue the public hearing to a date certain
- Close the hearing to oral testimony, but leave the record open to a date certain to receive written testimony

- Close the hearing and set deliberations to a date certain
- Close the hearing and immediately begin deliberations

Attached: DEQ/DLCD letter dated Nov. 10, 2015
Newberry Country: A Plan for Southern Deschutes County



Oregon

Kate Brown., Governor

Department of Environmental Quality

Eastern Region Administrative Office
475 NE Bellevue, Suite 110
Bend, OR 97701
Fax: (541) 388-8283



November 10, 2015

Peter Russell
Senior Transportation Planner
Deschutes County Development Dept
117 NW Lafayette Avenue
Bend, Oregon 97708

Department of Land Conservation and Development

Bend RSC, Colorado Terrace
1011 SW Emkay Drive, Ste 108
Bend, OR 97702
Phone: (541) 322-2032



Dear Mr. Russell:

This letter includes the joint comments of the Oregon Department of Environmental Quality (DEQ) and the Oregon Department of Land Conservation and Development (DLCD). During the county Board of Commissioner's hearing on October 28, 2015 both DEQ and DLCD agreed to review the text of the draft Findings document. The purpose of this review was to respond to citizen concerns that the document may unintentionally insinuate that the region is currently experiencing polluted drinking water that pose a risk to public health.

We have found that the draft document includes the term "health hazard" a total of 19 times. In all but one of these instances the term is simply stated in the applicable provisions of county or state law cited in the body of the document, most of which is not directly applicable to the subject proposal. In no instance has this term been used as a mean of addressing the review criteria. Furthermore, we have found, that the draft document repeatedly responds to the applicable review criteria by emphasizing the existing settlement pattern in the subject area.

In conclusion, it is our recommendation that the language remain as written. We do not believe that the existing language mischaracterizes the current situation. Furthermore, we are concerned that removing language regarding the inevitable future threats to the region's groundwater would unnecessarily weaken the subject proposal and increase its vulnerability to appeal.

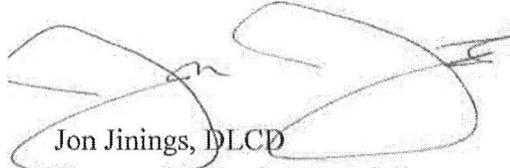
Thank you for this opportunity to comment. As we have stated in previous correspondence, we believe that planning today is better than reacting tomorrow and the Goal 11 exception is the tool that will allow genuine solutions to move forward. Please feel free to contact us if you have any questions or comments

Respectfully,



Eric Nigg, DEQ

Eastern Region Water Quality Manger



Jon Jinings, DLCD

Community Services Specialist