

**DECISION OF THE HEARINGS OFFICIAL
FOR THE CITY OF EUGENE, OREGON**

ZONE CHANGE

INTRODUCTION

Application File Name (Number):

Environ-Metal Properties, LLC/ Laurel Ridge (Z 15-5)

Applicant's Request:

Zone change from AG/WR - Agricultural with Water Resource overlay to PRO/PD/WR – Parks, Recreation & Open Space with Planned Development and Water Resource overlays and R-1/PD/WR – Low-Density Residential with Planned Development and Water Resource overlays.

Subject Property/Location:

Located at the end of Riverview Street, north of 30th Avenue, west of Moon Mountain. Assessor's Map 18-03-10-00 - Tax Lots 701 and 703.

Relevant Dates:

Application submitted on March 27, 2015; application forced complete on July 2, 2015; public hearing held on August 26, 2015.

Applicant's Representative:

Richard Satre of the Schirmer Satre Group.

Lead City Staff:

Erik Berg-Johansen, Associate Planner, Eugene Planning Division.

Summary of the Public Hearing

The Hearings Official held a public hearing on this application on August 26, 2015. The Hearings Official stated he had no conflicts of interests, was not biased, and had no *ex parte* communications to disclose. No person objected to the Hearings Official conducting the hearing. Erik Berg-Johansen (Berg-Johansen), Associate Planner, and Gabe Flock, Senior Planner, were present for the hearing. Berg-Johansen presented the staff report at the public hearing, recommending approval of the application. Richard Satre and Bill Kloos spoke in favor of the application. A number of neighbors from the Laurel Hill area spoke in opposition to the application. At the conclusion of the public hearing, the Hearings Official left the record open for

one week for the submission of new evidence, one additional week for responses to the new evidence, and one more week for the applicant's final legal argument.

FACTS

The subject property is comprised of two tax lots totaling 121.68 acres located in the Laurel Hill valley area. Tax lot 701 is the northern parcel and is located just south of the terminus of Riverview Street and Hendricks Hill Drive. Tax lot 703 to the south is located just northeast of 30th Avenue. Although the property has been annexed into the City, it still retains an Agricultural (AG) zoning designation with a Water Resource (WR) overlay. Adjacent parcels to the east are also zoned AG and parcels to the north are zoned Low-Density Residential (R-1). Large parcels to the south are located outside of the City's urban growth boundary (UGB) and designated forest land. Most of the southern boundary of tax lot 703 is also the southern edge of the UGB which runs near a ridgeline. The applicant seeks to rezone some of the property Low-Density Residential with Planned Development and Water Resource overlays (R-1/PD/WR) and part of the property Parks, Recreation & Open Space with Planned Development and Water Resource overlays – (PRO/PD/WR).¹

In 2012, the applicant sought to rezone the entire property R-1.² The applicant also submitted concurrent applications for a planned unit development, standards review, and a traffic impact analysis. An approval criterion for zone changes is that the proposed zone change be consistent with the Metro Plan. As discussed in more detail later, the Metro Plan is a general map that does not show specific parcels in the area of the applicant's property. On the Metro Plan the boundary between a Low Density Residential (LDR) plan designation (which R-1 zoning enacts) and a Parks and Open Space (POS) plan designation (which PRO zoning enacts) is close to the UGB that is the southern boundary of tax lot 703. In the 2012 applications, the applicant argued that all of the property inside the UGB was planned LDR. Another hearings official denied the applications for not being consistent with the Metro Plan because he found that the boundary between the LDR and POS plan designation was north of the UGB and ran through the applicant's property. The Planning Commission and the Land Use Board of Appeals (LUBA) affirmed the Hearings Officer's conclusion that part of the applicant's property is planned POS.

¹ Because there is no dispute regarding the planned development and water resource overlays, for ease of reference I will just refer to the two proposed zoning designations as R-1 and PRO.

² There is a small portion of tax lot 703 in the southeast corner that is outside the UGB that was not included in the 2012 zone change request or the present request and is not at issue.

See Environ-Metal Properties, LLC v. City of Eugene, ___ Or LUBA ___ (LUBA No. 2013-098, Jan. 29 2014) (providing a more detailed explanation of the property). The court of appeals affirmed LUBA’s decision without an opinion. 263 Or App 714 (2014). Although LUBA agreed with the previous Hearings Official that part of the applicant’s property was planned POS, LUBA did not determine where the boundary was but did provide some guidance on how to determine a more precise location of the boundary.

In the present case, the applicant has attempted to ascertain the boundary between the LDR and POS plan designations. The applicant has provided its position on where the boundary is and has requested R-1 zoning to the north of the boundary and PRO zoning to the south of the boundary. Opponents, including the Laurel Hill Valley Citizens (LHVC), dispute the applicant’s location of the boundary and provided evidence of where they believe the boundary should be located. Unsurprisingly, the applicant’s boundary would allow for more R-1 zoning while the opponents’ boundary would require more PRO zoning. The dispute in this case is the location of that boundary.

DOCUMENTS CONSIDERED BY THE HEARINGS OFFICIAL

I have considered all of the documents in the planning file for the proposed zone change, (Z 15-5) as well as the testimony and documents provided at the public hearing and the evidence submitted during the open record period.

ANALYSIS

Eugene Code (EC) 9.8865 provides the criteria for approval of a zone change.³ EC 9.8865(1) provides in pertinent part that the “proposed change is consistent with the applicable

³ EC 9.8865 provides:

“Zone Change Approval Criteria. Approval of a zone change application, including the designation of an overlay zone, shall not be approved unless it meets all of the following criteria:

- “(1) The proposed change is consistent with applicable provisions of the Metro Plan. The written text of the Metro Plan shall take precedence over the Metro Plan diagram where apparent conflicts or inconsistencies exist.
- “(2) The proposed zone change is consistent with applicable adopted refinement plans. In the event of inconsistencies between these plans and the Metro Plan, the Metro Plan controls.
- “(3) The uses and density that will be allowed by the proposed zoning in the location of the proposed change can be served through the orderly extension of key urban facilities and services.

provisions of the Metro Plan.” The dispute in this case is whether the applicant’s proposed zone change is consistent with the boundary between LDR and POS plan designations on the Metro Plan diagram. There is no dispute regarding whether the remaining zone change approval criteria in EC 9.8865 are satisfied. I have reviewed the staff report and it thoroughly analyzes the remaining zone change approval criteria and explains why they are satisfied. I therefore adopt and incorporate those findings in this decision.

A preliminary issue is whether I must only determine whether the applicant’s proposed boundary is correct or whether I must determine where the boundary is if different from the applicant’s proposal. Opponents argue that if the applicant’s proposed boundary is inaccurate (which they argue it is) that the application should be denied. The applicant argues that even if it is wrong about the boundary of the location, the City must determine where the boundary is and rezone the property accordingly.

I agree with the applicant that the location of the boundary is a matter of law and that the applicant is entitled to a zone change to R-1 up to the boundary, wherever the boundary is. In 2012, the applicant submitted a development plan along with the zone change request. Because the zone change request was denied, the development plans also had to be denied. In the present case, the applicant is only seeking a zone change and is waiting on the final location of the zoning boundary to submit development plans. It is not the applicant’s fault that the Metro Plan is not parcel specific and it is difficult to determine exactly where the boundary is. The applicant should not be required to submit multiple applications trying to determine where the boundary is located. The applicant has submitted a reasonable proposal for where the boundary should be located. The applicant has demonstrated that it is entitled to a zone change to R-1 north of the boundary and PRO south of the boundary.

While it might seem that determining the specific boundary between plan designations would be relatively straightforward, it has turned out to be anything but. The location of the boundary is depicted on the 2004 Metro Plan diagram. The Metro Plan diagram was originally

“(4) The proposed zone change is consistent with the applicable siting requirements set out for the specific zone * * *.

“(5) In cases where the NR zone is applied based on EC 9.2510(3), the property owner shall enter into a contractual arrangement with the city to ensure the area is maintained as a natural resource area for a minimum of 50 years.”

adopted in 1980 and then amended in 1987 and 2004. There are more recent maps purporting to be the Metro Plan diagram, but as explained by the applicant the last adopted Metro Plan diagram was the 2004 version. No new versions of the Metro Plan diagram have been adopted since 2004. The 2004 Metro Plan diagram is a small scale map on an 11 x 17 inch map where one inch equals approximately 7000 feet. The POS designation is depicted in a green color and the LDR designation in a yellow color. The UGB is depicted as a dashed black line. The UGB line, however, is only approximation as the exact location of the UGB was not established until a boundary commission decision in 2007. East 30th Avenue and the UGB intersect on the Metro Plan just to the southwest of the property.

After agreeing with the City that at least some of the applicant's property was planned POS, LUBA suggested a potential method to determine a precise location for the boundary:

“Because the Metro Plan diagram is now digitized, and the depicted plan boundaries are sharper than in previous versions, the problem may not be as difficult to solve as petitioners [the applicant] fear. It may be possible to scale up the digital version of the map, overlay it with property lines from a digital database, and determine the precise plan designation boundaries on the subject property with reasonable accuracy. If for some reason that is not possible, the city and petitioner will have to do the best they can with the tools at their disposal.” Slip op 21.

While the applicant argues that LUBA's instructions are merely dicta and need not be followed, LUBA's suggestions certainly seem like a good place to start. The applicant, however, does raise the point that LUBA was not aware that there is not a digitized version of the 2004 Metro Plan available. As the applicant explains, although there is a digitized version of the Metro Plan, that digitized version is not identical to the 2004 Metro Plan. The Lane Council of Governments (LCOG) maintains the maps and data used in generating the maps. The current version available from LCOG has made adjustments and improvements since 2004. LCOG also specifically states that the only version of the Metro Plan that is considered official is the 2004 11 x 17 inch version.⁴ As digitized versions cannot be used precisely as LUBA suggested, the parties have had “to do the best they can with the tools at their disposal.”

In general, the parties have attempted to follow LUBA's suggestion by enlarging the relevant portion of the Metro Plan and superimposing the subject property on that enlargement.

⁴ As the applicant points out, LCOG's August 12, 2015 letter to LHVC states, “[e]ven now, after several iterations of adoption and amendment, it is worth noting that the only version of the Metro Plan Diagram that is considered official is the one produced at the 11 x 17 size and scale, on which the designations are depicted over single-line representation of major streets and roads.”

The applicant produced a metes and bounds description of the property. No one appears to take issue with that description. The applicant then superimposed the subject property, using the metes and bounds description, on to a same scale version of the 2004 Metro Plan. Because the 2004 Metro Plan is generalized, the decision of where to place the subject property when superimposing it on the 2004 Metro Plan requires the use of referents to properly line up the two maps. The applicant used East 30th Avenue and the north arrow to align the two maps. An enlarged version of the applicant's proposed boundary is depicted in Exhibit M.

LHVC does not agree with the method the applicant used to superimpose the map of the property on to the scaled version of the 2004 Metro Plan. LHVC produced maps showing much more POS designated land by using a version of the Metro Plan diagram obtained from LCOG that are depicted in Exhibits 1-5 to their letter of September 2, 2015. LHVC also uses tax lots for other properties, city limits, and additional streets to generate what it argues are more accurate maps than the applicant. LHVC materials were prepared in part by a certified engineering geologist, and the arguments are compelling. In fact, if the question were where the boundary is most likely located using any available information, I would likely agree with LHVC. In determining the boundary, however, we are all bound by the 2004 Metro Plan diagram. As staff's September 2, 2015 memorandum explains, LHVC used maps generated by LCOG from a digital version that is different from the 2004 Metro Plan. Even though that digitized version is likely more accurate than the 2004 Metro Plan, even LCOG acknowledges that only the 2004 Metro Plan is the official version of the diagram. Furthermore, city limits and tax lots are not depicted on the 2004 Metro Plan diagram. So even though LHVC's maps may be theoretically more accurate, they are not more accurate for determining the boundary by using the 2004 Metro Plan diagram.

LHVC also takes issue with how the applicant aligned East 30th Avenue with the subject property. According to LHVC, aligning the location of East 30th Avenue on the map of the property with East 30th Avenue on the 2004 Metro Plan diagram results in the two depictions of East 30th Avenue diverging from each other, particularly the farther you get from the property. LHVC attempted to align East 30th Avenue differently to show more POS plan designation for the property. The 2004 Metro Plan diagram is a generalized map. When it is scaled up to match metes and bounds descriptions of individual parcels there will almost always be discrepancies. No matter where you align East 30th Avenue, the farther you get away from the alignment the

more the maps will diverge. It seems reasonable to me to align East 30th Avenue along the property line as the applicant did. That method seems more likely to be more accurate in the vicinity of the property than aligning East 30th Avenue farther away from the property. Therefore, I agree with the applicant that it properly used East 30th Avenue as a referent.⁵

LHVC also argues that the applicant misaligned the map of the property on the 2004 Metro Plan diagram because it did not rotate the map of the property to match the rotation of the 2004 Metro Plan diagram. Upon close examination of the 2004 Metro Plan diagram, it is apparent that the north arrow is not pointing straight up to the top of the page, but instead is pointing slightly clockwise. LHVC explains that this is a two degree tilt to align with “grid north” as opposed to straight up, which would be pointing to “true north.” Without descending into a cartographical rabbit hole, essentially grid north is designed to take into account the discrepancy of creating a flat map of the spherical earth. LHVC argues that while the 2004 Metro Plan is tilted two degrees to grid north, the map of the property that the applicant superimposed on the 2004 Metro Plan is not tilted and is pointed to true north. The applicant laudably confirmed during the open record period that in fact the map of the property was pointed to true north while the Metro Plan is tilted to grid north. If LHVC is correct that the map of the property was not tilted as it should have been to align with the 2004 Metro Plan then additional portions of the applicant’s property would be designated LDR. In its final legal argument, the applicant argues that the two degree tilt to grid north on the 2004 Metro Plan is merely a scrivener’s error and should be disregarded.

The applicant argues that the 1980 and 1987 versions of the Metro Plan diagram, as well as the unofficial LCOG 2010 version all have the north arrow pointing straight up to true north. The applicant further argues that the findings associated with decision creating the 2004 Metro Plan diagram do not mention the north arrow. According to the applicant, if the governing bodies had intended to rotate the north arrow in the decision they would have mentioned it. Furthermore, the applicant argues that rotating the north arrow might result in different zoning designations for parcels from 1987 to 2004 in areas of the Metro Plan diagram that are not parcel specific.

⁵ LHVC also argues that a map submitted by the applicant during the 2012 application demonstrates that the applicant’s current proposed boundary is inaccurate. Applicant’s sheet SA 7.0 does show more of the property in the POS designation than the current proposal. I agree with the applicant, however, that that map was only used as a planning tool as was not in any way meant as a representation of the LDR/POS boundary.

There does not appear to be any explanation for why the north arrow points to true north in the 1980 and 1987 Metro Plan diagrams and points to grid north in the 2004 Metro Plan diagram. Perhaps the applicant is correct that the north arrow on the 2004 Metro Plan diagram is a scrivener's error. Perhaps the scrivener's errors occurred on the 1980 and 1987 Metro Plan Diagrams. As LHVC points out, there is a reason that the north arrow might be tilted towards grid north. ORS 93.312(2) provides:

“A description of land that contains coordinates associated with the position of a point on a land boundary must:

“(a) Use the Oregon Coordinate System;

“(b) Use one specified zone and system for the entire description * * *.”

According to LHVC, the Oregon Coordinate System is what requires using grid north. While the applicant is correct ORS 93.312 is not applicable to land use decisions and the 2004 Metro Plan diagram does not have coordinates, it is some justification for why the north arrow might be tilted.

Ultimately, I have no way of knowing whether the north arrow pointing to grid north on the 2004 Metro Plan diagram is a scrivener's error or not. As discussed earlier regarding more recent potentially more accurate versions of the Metro Plan diagram, we are stuck with what is depicted on the 2004 Metro Plan diagram for better or for worse. For whatever reason, the 2004 Metro Plan diagram depicts the north arrow pointing to grid north rather than true north. Therefore, I find that the map of the subject property should also have been tilted two degrees to grid north.

The applicant admirably recognized this might be a potential resolution and generated a map using the 2004 Metro Diagram and a map of the subject property also tilted two degrees to grid north. This map is submitted as Exhibit L. The applicant also submitted a metes and bounds legal description of the boundary depicted in Exhibit L in Exhibit O. I believe this is the most accurate description of the boundary between the LDR and POS plan designations on the property. Staff has asked for a condition of approval that the legal description be subject to review and approval by the City Surveyor and the City of Eugene Public Works Department. The applicant does not object to that condition of approval.

In conclusion, this present situation is not like a math or science problem that if we work hard enough or look closely enough that the correct answer will appear. There is no exact correct answer. As there is no exactly correct answer, the best guess is the best I can do. As LUBA

stated, we must to do the best we can with the tools at our disposal, and some of those tools arguably restricted the analysis. Given the 2004 Metro Plan diagram and the metes and bounds description of the property, I believe the best guess is to align East 30th Avenue along the western edge of the property and to rotate the map of the property to align with grid north as depicted in Exhibit L and described in Exhibit O.

DECISION

Based upon the available evidence and preceding findings, the Hearings Official APPROVES the applicant's request for a zone change from AG/WR – Agricultural with Water Resource overlay to PRO/PD/WR – Parks, Recreation & Open Space with Planned Development and Water Resource overlays and R-1/PD/WR – Low-Density Residential with Planned Development and Water Resource overlays, with the following condition of approval:

- (1) The legal description in Exhibit O shall be subject to review and approval by the City Surveyor and the City of Eugene Public Works Department.

Dated this 24th day of September, 2015.

Mailed this 24th day of September 2015.



Fred Wilson
Hearings Official

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