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Fee: NO FEE

BEFORE THE KLAMATH COUNTY BOARD OF COMMISSIONERS

IN THE MATTER OF FILE NUMBER CLUP/ZC 5-22**FINAL ORDER**

WHEREAS, Mindy Schell, applicant, owns an 80-acre parcel with two zonings: Forest Range (77.5 acres) and Low Density Residential (2.5 acres); and

WHEREAS, the 2.5 acres zoned Low Density Residential has buried asbestos documented by the Oregon Department of Environmental Quality, and

WHEREAS, the applicant requested approval of an amendment to the Comprehensive Plan designation from Forest Range to Residential and change the zoning designation from Forest Range (FR) to Low Density Residential (RL) on 2.5 acre to relocate residential zoning to an area without buried asbestos; and

WHEREAS, the applicant, requested approval of an amendment to the Comprehensive Plan designation from Residential to Forest Range and change the zoning designation from Low Density Residential (RL) to Forest Range (FR) on 2.5 acre with buried asbestos, and

WHEREAS, the subject property is described as Tax Lot(s) 01500, and 01502, in Section 015D0 in Township 38 South, Range 9 East Willamette Meridian; and

WHEREAS, the Klamath County Planning Department provided proper notice of a public hearing held on September 27, 2022 before the Klamath County Planning Commission and Board of County Commissioners; and

WHEREAS, the applicant submitted said request for the Comprehensive Plan amendment and associated zone change in due form for consideration; and

WHEREAS, based on testimony entered and consideration of the whole record, and accepting the information provided in the application submittals as findings of fact and Findings in the Staff Report, the Klamath County Planning Commission concluded the application was in conformance with State Law, Klamath County Land Development Code and Comprehensive Plan, and forwarded a recommendation of Approval for Planning File CLUP/ZC 5-22 to the Board of County Commissioners; and

WHEREAS, based on testimony entered and after consideration of the whole record; and with a recommendation for approval from the Klamath County Planning Commission, the Klamath County Board of Commissioners acting within their authority, accepted the Planning Commission's recommendation, and unanimously **APPROVED** the request of Planning File CLUP/ZC 5-22.

Finding of Facts

Klamath Falls Urban Area Comprehensive Plan:

Public Need: To address Statewide Planning Goals 9 (Economic Development), 10 (Housing) and 11 (Public Facilities and Services), the applicant must demonstrate public need for the zone change by considering applicable relevant Volume II background studies and/or Volume III facility master plans as indicated below.

- a. **For small-scale zone changes in developed areas:** The proposal must result in a more logical and coherent land use pattern, as determined by the review authority.

Response: This is a small-scale zone change in a developed area, so decision if the zone makes more logical land use pattern rest with the Board of County Commissioners with a recommendation from the Planning Commission as the review authority.

- b. **For a zone change that would decrease the supply of buildable residential land:** If the proposal would rezone buildable land (as defined in the Residential BLI) from a residential zone to a non-residential zone, or result in decreased residential densities, then the HNA found in Volume II: Background Plans and Studies must be consulted to ensure that the rezone does not result in a shortage of buildable land for a needed housing type. This analysis is necessary to demonstrate compliance with Statewide Planning Goal 10: Housing. For example, if there is a documented shortage in the supply of High Density Residential land in the Urban Area, then the proposed zone change cannot make this shortage worse. To compensate for the loss of land for needed housing, other Urban Area land may be rezoned for comparable residential use, so as to result in "no net loss" of buildable land for the needed housing type.

Response: Not applicable. The request is to move the residential zoned land to another area to avoid accidentally exposing the buried asbestos. There will be no loss or gain of residential lands or forest lands.

- c. **For a zone change that would increase the supply of suitable commercial or industrial land:** the proposal must meet a need for a targeted employment opportunity identified in the Economic Opportunities Analysis (EOA) using the medium growth scenario. The EOA is found in Volume II: Background Plans and Studies. Alternatively, the review body

may rely on a written commitment to purchase the subject property for a specific employment opportunity to justify the need for an industrial zone change proposal.

Response: Not Applicable

2. **Transportation:** The subject property is properly related to transportation facilities to adequately serve the range of uses allowed in conjunction with such zoning and is consistent with the Urban Area Transportation System Plan. The proposed rezone must also meet Transportation Planning Rule (TPR) OAR 660-012-0060 requirements. To demonstrate compliance with the TPR, the applicant may be required to submit a Traffic Impact Study that meets local and Oregon Department of Transportation requirements. The zone change proposal may be conditioned to include demand management strategies that limit peak hour trips to achieve consistency with the TPR.

Response: Not applicable. This proposal will swap zoning on lands to avoid buried asbestos. Because there is no change in the overall acreage of zones, there is no increase or decrease in the amount of traffic.

3. **Adequate Public Facilities:** The subject property has adequate sanitary sewer, storm drainage and domestic water service to serve the range of uses allowed by the proposed zone.
- To make this adequacy finding, the subject property must be served or serviceable within the next 10 years as determined by the city, district and/or county engineer with jurisdiction.
 - The engineer's determination must consider the Urban Area Public Facilities Plan, and relevant facility master plans and capital improvement programs.

Response: The property is served by city water. The applicant will need to construct a septic.

4. **Residential Zoning Location:** The following locational guidelines shall be considered by the review body for rezoning proposal to the following residential zones:
- High Density Residential should be located within 1000 feet of transit service or should have frontage along a collector or arterial street.
 - Medium Density Residential should be located within a half mile of transit service and should have frontage along a collector street or higher classification.
 - Zone changes to Low Density Residential and Suburban Residential should not be allowed adjacent to an arterial street.

Response: Not Applicable; however, the subject property is not adjacent to an arterial street.

5. **Commercial Zoning Location:** The following locational guidelines shall be considered in the review of the following commercial rezoning proposals:
- a. General Commercial and Transportation Commercial shall have frontage along an arterial street; exclusive use of local streets that travel through existing single-family neighborhoods in Low Density Residential or Suburban Residential zones shall not be permitted.
 - b. Neighborhood Commercial should be located to serve existing or planned residential neighborhoods and shall have frontage along a collector street or arterial street; Neighborhood Commercial zoning may also be used as a transition area between General Commercial and Residential zones.
 - c. Downtown Commercial shall be limited to the Downtown Klamath Falls area as defined in the Urban Area Plan.

Response: Not Applicable. This application has nothing to do with Industrial or Commercial zoning.

6. **Topographical Constraints:**

- a. Areas with slopes that are predominantly 25 percent or greater and land within the 100-year floodplain should not be rezoned for High or Medium Density Residential uses.
- b. Areas with substantial topographic constraints, such as predominant slopes of 15% or greater, or substantial floodplain or wetland limitations, are not considered suitable for industrial or commercial development. To demonstrate suitability, the review authority may require engineering and mitigation studies that result in an effective mitigation plan.

Response: Not Applicable. There are no topographical constraints.

- c. **Contiguity:** In situations where up-zoning is proposed, the subject property should have comparable or more intensive zoning on at least one side to minimize incompatible land uses, and to restrict "spot-zoning".
- d. The contiguity requirement shall not apply to Neighborhood Commercial or Mixed Use zones, or to rezoning of 20 acres or more or contiguous land (where adequate buffers can be provided to mitigate potential adverse impacts from the rezoning).

Response: The area around the subject property is zoned Low Density Residential.

7. **Size and Shape:** The subject property is adequate in size and shape to accommodate the proposed use or uses allowed in the proposed zone.

Response: The subject property is rectangle in shape and can easily be developed.

8. **Historic Sites and Structures:** Rezoning of land will identify potential impacts on designated historic sites and structures and mitigate such impacts to the extent feasible.

Response: Not applicable.

9. **Noise Sensitive Uses:** Based on DEQ rules (OAR Chapter 340, Division 35):
- Zone changes that allow uses that generate substantial noise should not be located next to noise-sensitive uses unless noise attenuation measures are assured.
 - Noise sensitive land uses shall be prohibited or limited within noise-affected areas of the Klamath Falls Municipal Airport. (Ref. Goal 6 Policy)

Response: Not Applicable

10. **Neighborhood Impacts:** The review body shall consider impacts on uses allowed by zoning for properties within 500 feet of the proposed zone change.
- Where substantial adverse impacts are identified, the review body may condition the zone change to mitigate identified impacts.
 - Where substantial adverse impacts are identified but cannot be reasonably mitigated, the review body should deny the zone change.

Response: No impacts to surrounding properties have been identified. This request only relocates zoning boundary. There no increase or decrease in the amount of any type of zoning.

48.030 - REVIEW CRITERIA

- A. A request for a change of Comprehensive Plan designation may only be approved if it meets all applicable review criteria;**
- B. A request for a change of Comprehensive Plan designation shall be reviewed against the following criteria:**
- The proposed change is supported by specific studies or other factual information, which documents the public need for the change;***

Response: The area currently zoned residential has buried asbestos. By moving the residential zoning to an area without buried asbestos, greatly reduces the risk of exposing the public to asbestos.

- The proposed change complies with policies of the Comprehensive Plan and policies and standards of the Urban Area Transportation System Plan; and***

Response: This zone change is just moving the residential zoned property to another location on the 80-acre parcel. The area that was zoned residential will be zoned Forest Range. Overall, there is no impacts.

3. ***The proposed change complies with the Oregon State wide Planning Goals and Administrative Rules, including compliance with the TPR (OAR 660-012-0060). To document compliance with the TPR the applicant shall submit a Traffic Impact Study pursuant to Section 71.200. Exceptions to the Statewide Planning Goals, shall be based upon Statewide Planning Goal 2, Part II (Exceptions) as interpreted by Oregon Administrative Rules (OAR Chapter 660, Division 4).***

Response: Not applicable. There will be no increase in traffic.

Article 47.030 Review Criteria (Zone Change)

- A. ***A request for a change of zone designation may only be approved if it meets all applicable review criteria.***
- B. ***A request for a change of zone designation shall be reviewed against the following criteria:***
 1. ***The proposed change of zone designation is in conformance with the Comprehensive Plan and does not afford special privileges to an individual property owner not available to the general public or outside the overall public interest for the change;***

Response: The proposed zone change does not change the comprehensive plan due to the fact there is no increase or decrease of any one zoning. This zone change only slightly moves the residential zoning to avoid the buried asbestos.

2. ***The property affected by the change of zone designation is adequate in size and shape to facilitate any uses allowed in conjunction with such zoning;***

Response: A 2.5-acre area is large enough for the development of single-family dwelling and septic system. Every year throughout the county properties two acre in size are developed with single family dwellings.

3. ***The property affected by the proposed change of zone designation is properly related to streets and roads and to other public facilities and infrastructure to adequately serve the types of uses allowed in conjunction with such zoning;***

Response: The area zoned for residential use will be move to the east by roughly 250 feet. The property will still abut Northridge Drive. There is no

increase in the amount of residential zoning, so there is no change in the needed infrastructure.

4. *The proposed change of zone designation will have no significant adverse effect on the appropriate use and development of adjacent properties; and*

Response: No adverse effects have been identified.

5. *The proposed change is supported by specific studies and other factual information, which documents the need for the change.*

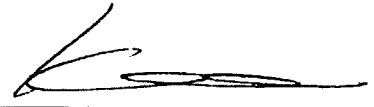
Response: The current area zoned for residential has buried asbestos. If the area zoned for residential use is moved to an area without buried asbestos, the risk of disturbing the asbestos is greatly reduced.

NOW, THEREFORE, THE KLAMATH COUNTY BOARD OF COMMISSIONERS ORDER AS FOLLOWS:

The Klamath County Planning Director shall draft for adoption by the Board of County Commissioners an ordinance amending the Klamath County Comprehensive Plan - General Land Use Plan Map and Zoning Map to reflect the proposed revision to the plan designation and zoning change as shown on attached Exhibit A.

Dated this 29 day of November, 2022

FOR THE BOARD OF COMMISSIONERS


Chair


Commissioner


Commissioner

Out of Office Today

County Counsel
Approved as to form

NOTICE OF APPEAL RIGHTS

This decision may be appealed to the Oregon Land Use Board of Appeals (LUBA) within 21 days following the date of the mailing of this order. Contact LUBA for information as how to file this appeal (LUBA by phone 1-503-373-1265 or mail at 550 Capitol Street NE, Suite 235, Salem, Oregon 97301-2552). Failure to do so in a timely manner may affect your rights.

EXHIBIT "A"

Map of Comprehensive Plan and Zoning Change.

