

MINUTES
UMATILLA COUNTY BOARD OF COMMISSIONERS
LAND USE HEARING
Meeting of April 13, 2017
9:30 a.m., Room 130, Umatilla County Courthouse
Pendleton, Oregon

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Commissioners Present: Chair Larry Givens, Vice-Chair Bill Elfering and Commissioner George Murdock
County Counsel: Doug Olsen
Members and Guests Present: Brandon Seitz, Planning Department; Tamra Mabbott, Planning Director; Seth King, Perkins Coie LLP Attorneys; Diego Arguea, Kittleson, Portland; Jim Footh, Seattle; George Plaven, East Oregonian

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CALL TO ORDER

The land use hearing was called to order at 9:30 a.m. by Chair Larry Givens. He welcomed all and reminded those present that the meeting is a public forum. The purpose of the meeting is to review a proposal by Vadata Inc. to rezone Tax Lot 1100 of approximately 120 acres from EFU to Light Industrial with limited use overlay and Goal 3 and Goal 14 exceptions. Introductions were made around the room.

Chair Givens asked that anyone wishing to testify should come forward, state their name and address for record and if they represent someone else, to so identify in addition, if any exhibits are to be entered to so state. Today's discussion is for Comprehensive Plan Text Amendment #T-17-072, Zone Map Amendment #Z-311-17 and Comprehensive Plan Map Amendment #P-119-17 (Statewide Goals 3 and 14). Vadata Inc., applicant, L&E Liberated LLC, owner. This is a request to rezone approximately 120 acres of EFU (as noted before).

He asked for staff report. Brandon Seitz, Planner, presented. This is for a limited use overlay – to develop subject property for industrial use for a data center and would require exception to Goals 3 and 14 for rezoning and placement of development on farmland (#T-17-072). He noted a letter received on 4/27/17 from 1000 Friends of Oregon, to be labeled Exhibit O.

Commissioner Elfering moved to enter the letter from 1000 Friends of Oregon, Meriel Darzen, as Exhibit O. Seconded by Commissioner Murdock. Carried, 3-0. In addition, **Commissioner Murdock moved to accept the staff memo and enter exhibits A - N as presented. Seconded by Commissioner Elfering. Carried, 3-0.** There were no questions. Tamra Mabbott, Planning Director, added the 1000 Friends letter was received timely but after the Planning Commission meeting, for which Ms. Darzen apologized. Findings have not been modified from the Planning Commission until today. Most notably would be Ms. Darzen's suggestion to show evidence in the record that the subject property could not feasibly obtain water rights. Ms. Mabbott noted that is easy to document and is addressed sufficiently. Also, evidence is in record and the application's counsel addressed why property was not suitable elsewhere. The subject property is surrounded on two sides by industrial vs. farm use. The project should not interfere with that use. A fourth item to share: 1000 Friends wants to know why

property elsewhere would not be suitable. Ms. Mabbott pointed out the only shovel-ready site in our area is Pilot Rock; Hermiston does have a shovel-ready site, but is not suitable after review by the applicant, Vadata, thus the site recommended today by the Planning Commission.

Commissioner Murdock asked for clarification of the exact location (see map on page 62 of the packet). Chair Givens referred to the map on page 28 denoting the exact location. He also pointed out there are no water rights—and throughout the area water rights probably won't be able to be obtained. Water is an issue. Regarding the map, discussion continued about the 120-acre parcel, to the West almost 19-20 acre parcel and other 38 acre parcel – what is being used on that farm ground now? Mr. Seitz noted all that property is owned by Liberated L&E, LLC (subject owner). That property has not been used for agriculture. Lot 1200, parcel to north and west is set for site of a project by EFSC. A Goal 5 significant site (for aggregate) is located north of Livestock Road. This property was leased by Glenn Chowning and farmed 15-20 years ago, but he had to transfer his own water rights and it wasn't feasible to farm the ground. It is natural grass, mainly and is unproductive and also not especially suitable for grazing. Chair Givens added that access and an easement is there. Ms. Mabbott pointed out it is not improved for road at this time; but access would be for Lot 1200. In response to a question by Commissioner Elfering, Mr. Seitz noted class 7 soil is considered not usable for farm production and only a very modest amount for grazing.

Chair Givens asked for proponents to present their case.

Seth King, Land Use Attorney, 1120 NW Couch St., Portland 97209, came forward on behalf of the applicant. He also noted two other team members were present for additional information and background. As a procedural matter, he asked if there was any ex parte conflict. Chair Givens asked the Board to declare ex parte conflict; none was heard. Chair Givens asked for any jurisdictions in opposition? None were heard. Mr. King noted three written submittals – the original application and two additional exhibits in the package were included in record. He concurred with the staff report.

Substantive topics of interest: the applicant is requesting two different exceptions (Goals 3 and 14) – that criteria was addressed. Next, reasons policy and goals shouldn't apply: there are three reasons: the site is not a particularly productive farm site (no water rights or irrigation); owner testimony in record shows the property hasn't been economically productive as farm site and DLCDC submitted a letter with no objections to Goal 3; in addition, there was farmer testimony and he was not interested in using it as farm ground. The site is well situated – between two interstate freeways. Thirdly, is the proposed use will generate significant economic benefits – creation of jobs as well as good use of the property.

The site evaluation and selection process was governed by needs of the applicant – had to be at least 180 acres and close to infrastructure and there is the ability for re-use of water discharge. No other sites met the criteria. Other data centers are in the area, but that site cannot accommodate this additional “campus”. The site is not more adverse in this location – it is probably less adverse. The applicant feels impacts will be positive – jobs and tax creation.

Regarding adjacent uses, the applicant feels it would be compatible and the best use.

Traffic impacts: a transportation engineer performed transportation analysis working with ODOT and the County. The conclusion is all mobility targets of service would be acceptable and it was also concluded map amendments would not be a significant effect on existing or planned transportation facilities. No operational or safety issues recommended. ODOT has submitted record of no adverse impacts regarding transportation.

Water: will be served by water systems -- the record includes letters from regional services in support. The City of Hermiston says there would be no adverse impacts to water supply and it may be improved since a large user will be added to the system in effect stabilizing rates and spread costs over a greater number of users.

To address the letter from DLCD for questions about clarification of uses allowed if approved, the applicant is only requesting approval as to a conceptual plan. Four data center buildings, warehouse building, administrative office building and plans for a future substation (in plan). Light industrial zone is suitable. Regarding a second question about the UGB – this was addressed earlier – this site meets the need and is suitable. DLCD found those answers sufficient.

In Response to 1000 Friends' letter noting four issues. 1) The property was suited to grazing or agricultural uses. That's been covered – the county is not required to make a finding – criterion requires there are reasons to justify why policy in Goal 3 should not apply (protecting farm land). That is not disputed by 1000 Friends. Water rights are not required for ag production – the record shows there are no water rights and haven't been for many years. It is critical groundwater area. Issue 2) the applicant doesn't meet exceptions - answered earlier. 3) Use won't interfere with change. Lands are in a couple of directions, but not surrounding. This site is compatible – it doesn't generate a lot of odor, vibration, bright lights, etc. – not offensive to surrounding uses. It is also set back from property lines, screened by fence and there may be buffering required. Light industrial uses in the area are compatible with farm uses – this finding is supported. Issue 4) regarding alternate sites – covered earlier -- site selection criteria showed this is the best site. And, the shovel-ready site was not suitable as noted earlier.

Commissioner Murdock asked about access and travel. Ms. Mabbott answered – she referred to the map on page 25 of the packets -- there is a truck stop travel plaza possibly pending – but nothing has been done as today. There was also another “dueling” truck stop but the permit expired. He asked about potential value. Mr. King noted both direct and indirect jobs would be valuable. At the other data campus, 40 jobs were created, paying \$68,000/year average as well as construction and vendors. Also ad valorem taxes would be significant. Ms. Mabbott added it is 40 people X 4 buildings. It would be shift work. This footprint would be larger than the ones at Umatilla.

Chair Givens asked about owner vs. applicant. Mr. King advised Vadata would purchase from L&E Liberated. Ms. Mabbott noted Liberated is out of California. JBJ is Pendleton Readymix – land used for extra aggregate mining.

Chair Givens noted approximately 209 acres in that whole area eventually could be set up for or used for light industrial. One agri-business zone is not part of that, but there is potential to better utilize that land than to just sit. What is water source for cooling of facilities? Mr. King advised it is processed water from the regional water system; it kicks in if over 70 degrees. (Ms. Mabbott added it is the Port of Umatilla.)

Commissioner Elfering asked about wastewater. Mr. King advised it is projected for sanitary through septic on-site, and for the processed water, the plan is to discharge to support nearby farming operations. There are multiple feasible options for that function. In response to a question by Commissioner Elfering about what quantity for waste cooling, Mr. King didn't remember peak flow – he would have to see his notes.

Commissioner Murdock noted his major concern is being compatible to that neighborhood – but there is considerable industrial area there.

There were no others in support.

Chair Givens asked for those in opposition? There were none heard. He asked for any state agencies? There were none in attendance. He asked for special districts? There were none. He closed the hearing at 10:17 a.m.

Deliberation

Commissioner Elfering felt use of the land for data center purposes would be far higher and a greater use than current use (nothing); dealing with wastewater will be important. The land has very little value for farming. The nature of that area changed from farming to industrial. With positive economic impact, he supports the application.

Commissioner Murdock talked about balancing agricultural production and quality of life as most important. Rural economy is in need of economic value. Vadata is an economic friend to the County and he is in favor of the application to enhance and continue the partnership.

Chair Givens agreed it is the best use of ground. In addition, possible future developments may be considered. He supports the application.

Commissioner Murdock moved to approve the recommendation of the Planning Commission for approval of the Vadata application and the adoption of Ordinance No. 2017-06. Seconded by Commissioner Elfering. Included in the motion and second was to also approve the findings as amended. Carried, 3-0.

Meeting adjourned at 10:21 a.m.

Respectfully submitted,

Melinda Slatt

Executive Secretary Umatilla County Board of Commissioners