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CLATSOP COUNTY
PLANNING SECTION

Application for Zone Change
11410 NW Skyline Boulevard
Portland, OR 97231

Case File: Pa-03-004

Phil and Amy Werner
4032 SE Ozark Ct.
Hillsboro, OR 97123
503-640-4335

May 8, 2003

EXHIBIT
1. T4-03001
ATTACHMENTS 1-3

37.0705 Type IV Quasi-Judicial Plan and Zone Change Approval Criteria

(A) Quasi-judicial Plan Review Revision. The burden of proof is upon the person initiating a quasi-judicial plan revision. The burden shall be to persuade that the following standards are met:

1. **The plan revision is consistent with the standards of ORS 197.732 if a goal exception is required, including any OAR's adopted pursuant to these statutes;**

N/A

2. **The proposal conforms to the intent of the relevant policies in the comprehensive plan or that the plan policies do not apply. In the case of a land use plan map amendment for a commercial, industrial, or public designation, evidence must also be presented that the plan does not provide adequate areas in appropriate locations for the proposed use;**

We have identified Plan Policies 9 and 11 to be relevant in this proposal.

Policy 9: Agricultural Land Area

The County's policy is to designate and maintain as exclusive agricultural land, areas which are:

Predominately agricultural soil capability I, II, III and IV, as defined by U.S. Soil Conservation Service:

95 percent of this parcel is mapped as class VI and VII soils. The three soils types located on the subject property are; Cascade silt loam (7C), Cascade silt loam (7D), and Goble silt loam (17E). Only Cascade silt loam (7C) is considered high value farmland soil, this soil type is found in less than 4 percent of the total land area of this property. Approximately 15 percent of the property is mapped Cascade silt loam (7D) and is not designated as high value farmland. This soil type resides in a narrow strip that wraps around the entire southern and western boundaries in a strip that does not exceed 200 feet in width. 86 percent of the parcel is mapped as Goble silt loam (17E). This is a type VI soil and is not considered suitable for farming. See attachment 1.

Of parcel sizes suitable for commercial agriculture;

The parcel is approximately 10 acres, a parcel of this size is considered relatively small for a farm operation, according to the 1987 Census of Agricultural statistics. The amount of land that is level enough for cultivated crops is no more that one acre. Even the area mapped as 7D with 15 to 30 percent slopes is too steep for cultivated crops. Nearly 90 percent of the parcel is too steep and the slopes to fragile to consider it suitable for livestock. Steep topography throughout most of the site diminishes the possibility of productive farming. Nearby farm operations are 15 – 40 acres that have slopes that are less than 15 percent.

In predominately commercial agricultural use;

The surrounding land is forestland and predominately zone CFU-2, see attachment 2. The nearest farm operation is approximately 350' feet away to the south, is a 13.25-acre parcel and is separated by Skyline Boulevard.

Not impacted by urban service;

This parcel is not located in an urban area and will not be impacted by urban service.

Other areas, predominately surrounded by commercial agricultural lands which are necessary to permit farm practices to be undertaken on these adjacent lands;

Activities associated with the proposed property should not significantly affect farm operations on adjacent properties. No farm activities occur to the north, east or west of the property. The subject site is approximately 350' away from the nearest farming operation. This farm area is a 13.25-acre parcel to the south and is separated by Skyline Boulevard. This farm operation does not require access onto or through the subject property.

Policy 11: Commercial Forest Land Area

The County's policy is to designate and maintain as commercial forestland, areas which are:

Predominately in Forest Cubic Foot Site Class I, II and III for Douglas Fir as classified by the U.S. Soil Conservation Service;

The surrounding land is predominately zoned CFU-2 and the soil conditions on this property are suitable for the growth of Douglas Fir.

Suitable for commercial forest use and small woodlot management;

Due to the soil conditions the site is currently being managed as a small woodlot.

Potential reforestation areas, but not, at the present, used for commercial forestry;

Timber on this property was harvested about 10 years ago and reforestation of 2850 Douglas Fir trees occurred at that time.

Not impacted by urban services;

The property is not located in an urban area and will not be impacted by urban services.

Cohesive forest areas with large parcels;

Parcels to the north, east and west are large parcels that are commercial forestlands zoned CFU-2.

Other areas which are:

Necessary for watershed protection or are subject to landslides, erosion or slumping;
or

Wildlife and fish habitat areas, potential recreation areas, or are of scenic significance.

The subject site is typified by steep slopes in all but a few areas. The entire parcel is identified as a hazard area on the Multnomah County Slope Hazard Map. Landslides, erosion or slumping are possibilities due to the topography of the parcel, but not expected.

The subject property is designated as containing significant wildlife habitat (SEC-h). Maintaining the current woodlot through reforestation will enhance the wildlife habitat and will increase the scenic significance.

3. **The uses allowed by the proposed changes will:**
 - a. **Not destabilize the land use pattern in the vicinity;**
 - b. **Not conflict with existing or planned uses on adjacent lands; and**
 - c. **That the necessary public services are or will be available to serve allowed uses.**

Allowed uses under the CFU-2 zoning are:

(A) Forest operations or forest practices, including, but not limited to, reforestation of forest land, road construction and maintenance, harvesting of forest tree species, application of chemicals and disposal of slash; temporary on-site structures which are auxiliary to and used during the term of a particular forest operation; or physical alterations to the land auxiliary to forest practices including, but not limited to, those purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities:

The soil on the majority of the property is Goble Silt Loam (17E). This soil type, according to the Soil Survey of Multnomah County, is best suited for the growth of Douglas Fir trees. Reforestation of the property occurred about five years ago with the planting of approximately 3000 Douglas Fir trees. The adjacent properties are currently zoned as CFU-2 and are used in a manner consistent with the plan policies. There is an existing logging road into the property, which provides log trucks access to interior parcels for forest practices. At this time there is no active harvesting of forest tree species on the subject property or the adjacent CFU-2 zoned properties.

At this time there is no active forest operation on this property or adjacent properties; therefore, there is not a need for a temporary on site structure to be using during the term of any forest practice. In the future if forest operations commence, a temporary on site structure may be placed on the property, and would be in accordance with the conditions of the allowed uses under MCC 33.2215.

Based on the soil type and the current use of the subject property and adjacent lands changing the zoning will not destabilize the land pattern use in the vicinity. Although, the current zoning for the property is EFU, it is being used in a manner consistent with the policies of CFU-2 zoning.

Changing the zoning on this property will not conflict with the planned uses of adjacent lands as the use of this property and the adjacent properties is consistent with the policies of CFU-2 zoning. The nearest farm is located approximately 350' away and is separated by Skyline Boulevard. This farm operation does not require access onto or through the subject property. There is no evident conflict with existing or planned uses on adjacent lands.

As stated above there is an existing logging road to serve the logging operations that may occur on the subject property. Power, telephone, natural gas and water are also available to serve the needs of existing or future forest operations.

(B) A temporary portable facility for the primary processing of forest products;

Placing a temporary portable facility on this existing foundation will not destabilize the land use patterns in the vicinity, as the lands adjacent are predominately zone CFU-2 and used in a manner consistent with the CFU-2 plan policy.

There is no apparent conflict with the adjacent properties, which are zoned predominately CFU-2, by placing a temporary portable facility on the subject site property for the intent of processing forest products.

Power, telephone, natural gas and water are currently available on this site, as well as a road giving access to the site to serve this allowed use.

(C) Farm use, as defined by ORS 215.203;

Farming does occur on a parcel, approximately 350' away to the south of the subject property and is separated by Skyline Boulevard. Using the subject property for farming would not destabilize the land use in the vicinity. However, it was previously determined in Multnomah County Case File No. CU 9-95, that based on the configuration, steepness and limited and disjointed location of agriculturally rated soils make the reasonable use of this land for agriculture difficult.

The land use pattern along Skyline Boulevard is a diverse mix of parcel sizes and uses. Farm use on this property would not conflict with existing or planned uses on adjacent lands as there is a farm in operation on a parcel approximately 350' away from the subject property. However, as previously stated, due to the configuration, steepness and limited agriculturally rated soils, agricultural use on this property would be difficult.

Power, telephone, natural gas and water are currently available on this site, as well as a road giving access to the site to serve this allowed use.

(D) Alteration, maintenance, or expansion of an existing lawfully established habitable dwelling is subject to the following:

The dimensional standards of MCC 33.2260 are satisfied; and

The development standards of MCC 33.2305(A)(5) are satisfied if the expansion exceeds 400 square feet of ground coverage.

This allowed use is not applicable in this proposal, as there is not an existing habitable dwelling on the subject site.

(E) Replacement of an existing lawfully established habitable dwelling on the same lot, subject to the following;

The replacement dwelling will be located within 200 feet of the existing dwelling; and

The existing dwelling is removed, demolished or converted to an allowable non-residential use within three months of the completion of the replacement dwelling; and

The replacement dwelling shall satisfy the dimension standards of MCC 33.2260 and the development standards of MCC 33.2305.

This allowed use is not applicable in this proposal, as there will not be a replacement of an existing lawfully established habitable dwelling.

(F) Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources, including a public or private wildlife and fisheries conservation area.

There is no apparent evidence that the allowed use of soil air and water quality will destabilize the land use pattern in the vicinity.

The subject property is designated as containing significant wildlife habitat (SEC-h). By changing the zoning to CFU-2, this allowed use would not destabilize the surrounding properties, but would enhance it by the preservation and maintenance of the current woodlot. These practices will provide for an increased wildlife conservation area.

This use does not conflict with the land use pattern in the vicinity as the surrounding lands are predominately forested with reforestation having occurred.

Power, telephone, natural gas and water are currently available on this site, as well as a road giving access to the site to serve this allowed use.

(G) An uninhabitable structure accessory to fish and wildlife habitat;

This allowed use will not destabilize the land use pattern in the vicinity as the surrounding parcels are predominately forested woodlots with reforestation in process. This application of land use enhances the fish and wildlife habitat. At this time, there is no intent to place an uninhabitable structure accessory to fish and wildlife habitat on this property.

Adjacent lands are predominately zone CFU-2 and used in a manner consistent with that zone classification, there is no evidence that this allowed use will conflict with planned or existing uses on adjacent lands.

Power, telephone, natural gas and water are currently available on this site, as well as a road giving access to the site to serve this allowed use.

(H) A caretaker residence for a public park or a fish hatchery;

This allowed use is not being considered in this proposal as there is not an existing public park or fish hatchery on this property, nor is there the intent or resource to establish these uses.

(I) Local distribution lines (e.g., electric, telephone, natural gas, etc.) and accessory equipment (e.g. electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals) or equipment which provides service hookups, including water service hookups;

This allowed use will not destabilize or conflict with current land practices.

(J) Climbing and passing lanes within the right-of-way existing as of July 1, 1987.

This allowed use is not being considered in this proposal, as there are not climbing and passing lanes on the subject property, nor is the subject property within the existing right of way.

(K) Reconstruction or modification of public roads and highways, not including the addition of vehicular travel lanes, where not removal or displacement of building will occur, or no new land parcels result;

This allowed use is not being considered in this proposal, as there is not a public road or highway on the subject property.

(L) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as not longer needed;

This allowed use is not being considered in this proposal, as there is not a temporary public road nor highway detour on the subject property.

(M) Miner betterment of existing public roads and highway related facilities such as maintenance yards, weigh stations and rest areas, within a right-of-way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

This allowed use is not being considered in this proposal, as there is not an existing public road and highway related facility on the subject property.

(N) A lookout tower for forest fire protection;

There is no apparent evidence that a lookout tower for forest fire protection would destabilize the land use pattern in the vicinity, as the adjacent properties are predominately forest land and would benefit from forest fire protection. There is no intent to place a lookout tower on the subject property; however, if this became necessary to preserve the current woodlot of the subject property and the adjacent properties, the owner would comply with the conditions set by the County.

Existing and planned land uses on the adjacent properties is predominately forest land and would benefit from forest fire protection in the event that a need should arise to install a lookout tower.

Power, telephone, natural gas and water are currently available on this site, as well as a road giving access to the site to serve this allowed use.

(O) A Water Intake facility, canal and distribution lines for farm irrigation and ponds;

A water intake facility, canal and distribution lines for farm irrigation and ponds will not destabilize the land use pattern in the vicinity as there is an active farm operation across Skyline Boulevard that could benefit from this allowed use. However, this is not being considered as the subject property and the adjacent properties are not being used in a manner consistent with this allowed use.

There is not an evident conflict with existing or planned uses on adjacent lands as the surrounding lands are predominately CFU-2, which does allow for farm practices; however, the adjacent properties and subject property are not active farm operations.

Power, telephone, natural gas and water are currently available on this site, as well as a road giving access to the site to serve this allowed use.

(P) A temporary forest labor camp;

A temporary forest labor camp would not destabilize the land use pattern in the vicinity as it would be supporting a forest practice, which is consistent with the land uses on the adjacent properties. However, due to the size of the subject property, just under 10

acres, it would not support such an operation and there is no intent to establish this type of forest operation.

There is not an evident conflict with existing or planned uses on adjacent lands as the surrounding lands are predominately forest land zoned CFU-2 and could have active forest operations. A temporary forest labor camp on the subject property would be consistent with the current land use patterns in the area.

Power, telephone, natural gas and water are currently available on this site, as well as a road giving access to the site to serve this allowed use.

(Q) Exploration for mineral and aggregate resources as defined in ORS 517;

This allowed use is not being considered in this proposal, as there are no known mineral or aggregate resources on the subject property.

(R) Exploration for geothermal resources;

This allowed use is not being considered in the proposal, as there are no known geothermal resources on the subject property.

(S) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

This allowed use is not being considered in this proposal, as the subject site has not been ordered a solid waste disposal by the Environmental Quality Commission.

(T) Type A home occupations pursuant to the definition and restrictions of MCC 33.0005 (H) (6) (a) and 33.2245. Home occupations as defined by MCC 33.0005 (H) (6) (a) do not allow the level of activity defined in ORS 215.448;

This allowed use will not destabilize the land use pattern in the vicinity as the owners shall comply with the definitions and restrictions set forth in MCC 33.0005 (H) (6) (a) and MCC 33.2245 if a Type A home occupation is considered.

This allowed use will not conflict with the existing or planned uses on adjacent lands as the owners shall comply with the definitions and restrictions set forth in MCC 33.0005 (H) (6) (a) and MCC 33.2245 if a Type A home occupation is considered.

Power, telephone, natural gas and water are currently available on this site, as well as a road giving access to the site to serve this allowed use.

(U) Other structures or uses determined by the Planning Director to be customarily accessory or incidental to any use permitted or approved in this district.

n/a

(V) Actions taken in response to an emergency/disaster event as defined in MCC 33.0005 pursuant to the provisions of MCC 33.0535;

n/a

4. Proof that circumstances in the area affected by the proposed revision have changed since adoption of the plan, or that there was a mistake in the plan, are additional relevant factors which may be considered under this subsection.

Based on the Soil Survey of Multnomah County, 95 percent of this parcel is mapped as class VI and VII soils. The three soils types located on the subject property are; Cascade silt loam (7C), Cascade silt loam (7D), and Goble silt loam (17E). Only Cascade silt loam (7C) is considered high value farmland soil. This soil type is found in less than 4 percent of the total land area of this property. Approximately 15 percent of the property is mapped Cascade silt loam (7D) and is not designated as high value farmland. This soil type resides in a narrow strip that wraps around the entire southern and western boundaries in a strip that does not exceed 200 feet in width. 86 percent of the parcel is mapped as Goble silt loam (17E). This is a type VI soil and is not considered suitable for farming. See attachment 1.

The subject property is approximately 10 acres, a parcel of this size would be considered relatively small for a farm according to the 1987 Census of Agricultural statistics. The amount of land that is level enough for cultivated crops is no more that one acre. Even the area mapped as 7D with 15 to 30 percent slopes is too steep for cultivated crops. Nearly 90 percent of the parcel is too steep and the slopes to fragile to consider it suitable for livestock. Steep topography throughout most of the site diminishes the possibility of productive farming.

Based on the configuration, steepness and limited agriculturally rated soils, agricultural use on this property would be difficult at best, it is our position that this site is inappropriately zoned as EFU. The current use of the subject property is small woodlot management, the land use pattern of the adjacent land is also forest management. Changing the zone from EFU to CFU-2 would be more consistent with the manner in which the land is used.

(B) Quasi-Judicial Zone Change. The burden of proof is upon the person initiating a zone change request. The burden shall be to persuade that:

1. Granting the request is in the public interest:

The Planning Commission establishes land zoning classification guidelines to preserve valuable land from inappropriate and incompatible use. It is the public's interest to maintain valuable agricultural and forestlands from inappropriate use. The public interest is best served when land is zoned correctly and used in the correct manner consistent with the guidelines of that zone.

2. There is a public need for the requested change and that need will be best served by changing the classification of the property in question as compared with other available property;

The subject property is one of the only parcels in the area zoned as EFU and is nearly surrounded by forest lands zoned CFU-2. The Planning Commission's intent is to ensure that the land in their district is properly zoned, this serves public's interest by ensuring valuable land resources are not inappropriately used. The public need is best served by changing the zoning on the subject property to a classification of CFU-2, which is more consistent with the type of land use pattern on this property and the surrounding properties.

3. The proposed action fully accords with the applicable elements of the Comprehensive Plan;

Comprehensive Plan Policies No. 9 and 11 applies to this request for a plan amendment.

The elements of Plan Policy No. 9 are:

Predominately agricultural soil capability I, II, III and IV, as defined by U.S. Soil Conservation Service:

95 percent of this parcel is mapped as class VI and VII soils. The three soils types located on the subject property are; Cascade silt loam (7C), Cascade silt loam (7D), and Goble silt loam (17E). Only Cascade silt loam (7C) is considered high value farmland soil. This soil type is found in less than 4 percent of the total land area of this property. Approximately 15 percent of the property is mapped Cascade silt loam (7D) and is not designated as high value farmland. This soil type resides in a narrow strip that wraps around the entire southern and western boundaries in a strip that does not exceed 200 feet in width. 86 percent of the parcel is mapped as Goble silt loam (17E). This is a type VI soil and is not considered suitable for farming. See attachment 1.

Of parcel sizes suitable for commercial agriculture;

The parcel is approximately 10 acres, a parcel of this size would be considered relatively small for a farm operation, according to the 1987 Census of Agricultural statistics. The amount of land that is level enough for cultivated crops is no more that one acre. Even the area mapped as 7D with 15 to 30 percent slopes is too steep for cultivated crops. Nearly 90 percent of the parcel is too steep and the slopes to fragile to consider it suitable for livestock. Steep topography throughout most of the site diminishes the possibility of productive farming. Nearby farm operations are 15 – 40 acres that have slopes that are less that 15 percent.

In predominately commercial agricultural use;

The surrounding land is forestland and predominately zone CFU-2. See attachment 2. The nearest farm operation is approximately 350' away to the south and is a 13.25-acre parcel that is separated by Skyline Boulevard.

Not impacted by urban service;

This parcel is not located in an urban area and will not be impacted by urban service.

Other areas, predominately surrounded by commercial agricultural lands which are necessary to permit farm practices to be undertaken on these adjacent lands;

Activities associated with the proposed property should not significantly affect farm operations on adjacent properties. No farm activities occur to the north, east or west of the property. The subject site is approximately 350' away from the nearest farming operation. This farm area is a 13.25-acre parcel to the south and is separated by Skyline Boulevard. This farm operation does not require access onto or through the subject property.

The elements of Policy No. 11 are:

Predominately in Forest Cubic Foot Site Class I, II and III for Douglas Fir as classified by the U.S. Soil Conservation Service;

The surrounding land is predominately zoned CFU-2 and the soil conditions on this property are suitable for the growth of Douglas Fir.

Suitable for commercial forest use and small woodlot management;

Due to the soil conditions the site is currently being managed as a small woodlot. The property was recently reforested with 2850 Douglas Fir trees.

Potential reforestation areas, but not, at the present, used for commercial forestry;

Timber on this property was harvested about 10 years ago and reforestation of 2850 Douglas Fir trees occurred at that time.

Not impacted by urban services;

The property is not located in an urban area and will not be impacted by urban services.

Cohesive forest areas with large parcels;

Parcels to the north, east and west are large parcels that are commercial forestlands zoned CFU-2.

Other areas which are:

**Necessary for watershed protection or are subject to landslides, erosion or slumping;
or**

Wildlife and fish habitat areas, potential recreation areas, or are of scenic significance.

Most of the subject site is subject to severe slopes. The entire parcel is identified as a hazard area on the Multnomah County Slope Hazard Map. Landslides, erosion or slumping are possible due to the topography of the parcel.

The subject property is designated as containing significant wildlife habitat (SEC-h). Maintaining the current woodlot and through continued reforestation, will enhance the wildlife habitat and will increase the scenic significance.

Although both plans have been determined as applicable to this proposal, based on the configuration, size, steepness, limited agriculturally rated soils and the current land use, it is apparent that the elements of Plan Policy No. 11 are more applicable to this property.

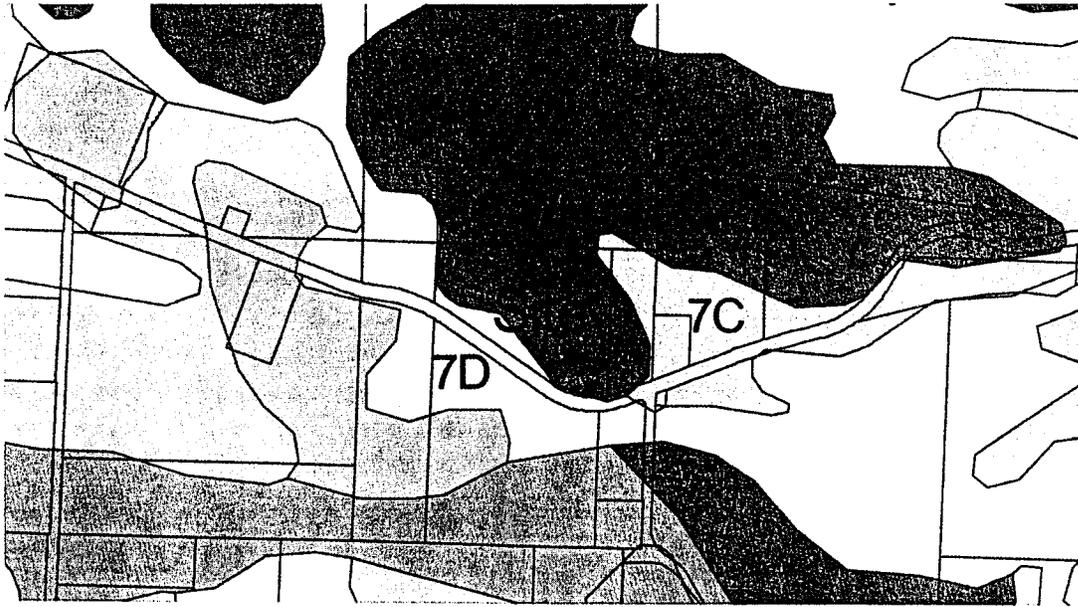
4. Proof of change in a neighborhood or community or mistake in the planning or zoning for the property under consideration are additional relevant factors to be considered under this subsection.

It is our position that the zoning classification of EFU for this site is a mistake. The attached aerial photo and the simple photos of the property taken by Phil Werner clearly show that this property is not intended for agricultural use. See attachment 3a – 3d.

All studies done on the property have proved that the soil conditions, slope and current use of the site is not consistent with the guidelines of the zone classification EFU. Therefore, approval of a zone change to CFU-2 is requested.

- *Memorandum - continued*
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Figure 3: Soil Types



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Figure 3: Soil Types

