

IN THE COUNTY COURT OF THE STATE OF OREGON

IN AND FOR THE COUNTY OF WASCO

Nov 4 10 17 AM '99

IN THE MATTER LEGISLATIVE AMENDMENTS TO THE)
WASCO COUNTY COMPREHENSIVE PLAN MAP)
DESIGNATION AND THE LAND USE AND DEVELOPMENT)
ORDINANCE MAP TO CHANGE THE ZONING)
DESIGNATION OF EIGHT PARCELS WITHIN THE)
TRANSITION LANDS STUDY AREA FROM "F-F(10)")
FOREST-FARM TO "R-R(10)" RURAL RESIDENTIAL ZONE)
IN THE TRANSITION LAND STUDY AREA.)

KAREN R. LEBRETON
COUNTY CLERK

) ORDINANCE
) 99-111
) (Amending
) Ordinance 97-102
)
)

NOW ON THIS DAY, the above-entitled matter having come on regularly for consideration, said day being one duly set in term for the transaction of public business and a majority of the Court being present; and

IT APPEARING TO THE COURT: That on March 18, 1998, Ordinance No. 97-102 adopted amendments to the Wasco County Comprehensive Plan and Wasco County Land Use and Development Ordinance within the Transition Land Study Area including maintaining the existing "F-F (10)" Forest-Farm zoning designation of 8 parcels until 'certain other issues' were solved. The 'certain other issues' were issues of a Land Use Board of Appeals (LUBA) appeal pending on one of the 8 parcels. The parcels are described as Township 2 North, Range 12 East, Section 21: Tax Lots 1400, 1100, 1000 and Township 2 North, Range 12 East, Section 22, Tax Lots 4300, 4200, 4000, 3900, and 3100; and

IT FURTHER APPEARING TO THE COURT: That the proposed amendment is now requested to complete the implementation of the change in zoning designation of the eight parcels; and

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IT FURTHER APPEARING TO THE COURT: That on Tuesday, August 3, 1999, in the Columbia Gorge Community College Board Room #1.162, The Dalles, Oregon, the Wasco County Planning Commission met to conduct a legally notified public hearing on the above matter. Those members of the Planning Commission present were determined to be qualified to hear the matter. Vice-Chairman Don Hoffman read aloud the rules of evidence. The Planning Commission reviewed the record and received all testimony and evidence, including the written testimony from Michael Lilly representing Ken Thomas (letter dated August 10, 1999), then closed the public hearing; and

IT FURTHER APPEARING TO THE COURT: That the Planning Commission then deliberated, and based upon the full record and evidence and testimony presented, voted 5-0 to recommend to the County Court the approval of the proposed change in zoning designation of eight parcels in the Transition Lands Study Area (Resolution 99-104); and

IT FURTHER APPEARING TO THE COURT: That at 10:00 a.m. on Wednesday, October 6, 1999, in the County Courtroom, Room 202, of the Wasco County Courthouse, 511 Washington Street, The Dalles, Oregon, this Court met to conduct a legislative public hearing on the above matter. The members of the Court were determined to be qualified to hear the matter; and

IT FURTHER APPEARING TO THE COURT: That the Court reviewed the record of the Planning Commission, heard the Staff report and received testimony and evidence from the parties, then closed the hearing for further input. The Court then deliberated, resulting in a 3-0 vote to adopt the proposed legislative amendments to amend the Wasco County Comprehensive Plan Map Designation from F-F, Farm Forest, to RR, Rural Residential, and Land Use and Development Ordinance Map to change the zoning designation of eight parcels from "F-F(10)" Forest-Farm to "R-R(10)" Rural Residential. The subject parcels are described as Township 2 North, Range 12 East, Section 21: Tax Lots 1400, 1100, 1000 and

Township 2 North, Range 12 East, Section 22, Tax Lots 4300, 4200, 4000, 3900, and 3100. Based upon the full record and evidence and testimony presented, the Court being fully apprised in the premises, did hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. In making its decision, the County Court recognizes and adopts the findings of fact in the Staff Report presented to them and made a part of this record at the hearing held on October 6, 1999:
 - A. The rezone conforms with the comprehensive plan background document Transition Lands Study Area, September, 1997, included by reference.
 - B. The eight parcels would be rezoned from FF to RR. The TLSA study identified these eight parcels as most suitable for the proposed residential use.
 - C. The assessment of road capacity, fire protection, water, and residential character was fully considered in the TLSA study prepared for this area and which includes the subject parcels in consideration of public health, .
2. The additional Findings of Fact attached as Exhibit A.
3. Proper notice was given and the hearing was held in accordance with procedural rules for legislative hearings and in conformity with said requirements as set forth in the Wasco County Comprehensive Plan.
4. Three (3) members of the County Court were present and were qualified to sit as decision-makers after full disclosure was made and the matter of qualifications was discussed by the Court;
5. In making its decision, the Court recognizes the procedural and legal requirements of the Wasco County Comprehensive Plan and the Wasco County Land Use and Development Ordinance and weighed fully each requirement in arriving at its decision.

CONCLUSIONS OF LAW

1. The amendments are being made to complete the implementation of the change in zoning designation of the eight parcels that was postponed in Ordinance 97-102.
2. The Court adopts the Conclusions of Law as set forth in the Staff Report presented to them and made a part of this record at the hearing held on October 6, 1999.
3. The request is for a comprehensive plan map amendment and zoning map amendment.

NOW, THEREFORE, THE WASCO COUNTY COURT ORDAINS AS FOLLOWS: The Wasco County Comprehensive Plan Map Designation and Wasco County Land Use and Development Ordinance Map are hereby amended to change the zoning designation of eight parcels in the Transition Lands Study Area from "F-F(10)" Forest-Farm to "R-R(10)" Rural Residential. The subject properties are described as Township 2 North, Range 12 East, Section 21: Tax Lots 1400, 1100, 1000 and Township 2 North, Range 12 East, Section 22, Tax Lots 4300, 4200, 4000, 3900, and 3100. The revised Land Use and Development Ordinance Map amendments adopted by these ordinance amendments are attached as Attachment A.

SIGNED this 3rd day of November, 1999.


Approved as to Form:



Eric J. Nisley
Wasco County District Attorney

Attachment: Exhibit A
Attachment A (Map)

WASCO COUNTY COURT


John Mabrey, Judge
Scott McKay, Commissioner
Dan Ericksen, Commissioner

<P:\TLSA 1999\CC Ordinance 99-111 Rezone 8 parcels.doc >

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Exhibit A – Findings of Fact
Ordinance 99-111

Additionally, the Wasco County Court finds the following:

In response to the letter to the Commission from Mr. Lilly, dated August 10, 1999

- A. Adopting this proposal is consistent with the Goals of the TLSA Study for protection of resource land (memo to Wasco County Court from Karen Mirande, pgs. 10-12 of the County Court packet, August 20, 1999):
1. The 8 parcels proposed for the zone change are not zoned "F-2" Commercial Forest lands, and are not resource lands (Letter from Department of Land Conservation and Development (DLCD) to Wasco County approving a Nonresource Determination of the "F-F(10)" lands, DLCD Order No. 00505 dated October 11, 1995, excerpt from the TLSA Study Appendices 5).
 2. Parcel size and existing fire protection are reasons why the "F-F(10)" (and proposed "R-R(10)") still act as a buffer to the "F-2" zone. (Letter from Wasco County to DLCD, Non resource Determination documentation, dated March 15, 1995, 'Summary' and, 'F F 10 Analysis,' excerpt from the TLSA Study Appendices 5).
 3. The TLSA Goals were acted upon by the TLSA Steering Committee, Planning Commission and County Court when they decided not to take additional land out of Commercial Forest zones for Rural Residential housing. (TLSA Study 'Recommended action items', page 3, 1st bullet) and;
 4. Protection of resource land included protecting the existing number of development options available in non-resource zones, and attempting to focus growth into the Browns Creek, Cherry Heights corridor (TLSA Study, page. 2, Policy Recommendations No. 3, 5, 6, and 7, and Figure 2 preceding pg. 2).
 5. Action items listed also included rezoning new "R-R(10)" lands (first bullet under "Recommended action items", pg. 3).

In response to the letter from Mr. Thomas, 29 September 1999, pg. 4, which characterizes this action as 'spot zoning':

- B. The County finds that there are 2 undeveloped tax lots north of Mr. Thomas' ownership which are eligible for non-resource related development vs. 30 lots as indicated by Mr. Thomas. The rezone of the eight parcels proposed will not "virtually surround [Mr. Thomas] by unrestricted residential development...". The lots to the south, east and west of his property remain in an F-2 zone and will not be eligible for the non-resource related development opportunities that apply to the eight parcels included in this rezone.

In response to the letter from Mr. Thomas to County Court, Oct. 5, 1999.

- C. The anticipated expenses cited by Mr. Thomas which will result from the zone change, while possibly expenses of doing business, are not clearly related to future, residential development allowed by this rezone (2 additional residences). It appears that many of the expenses are related to managing land adjacent to the existing houses, dealing with existing residents and visitors, and are standard costs of doing business. There is no causal link to conclude that these same costs can be applied to 2 additional houses.

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Furthermore increasing the cost of farm or forest management on adjacent lands is not a limiting factor when considering the rezone of non-resource lands. The county has gone above and beyond state requirements as is by requiring strict fire standards.

In response to Mr. Lilly's letter to Wasco County Court , October 6, 1999, pg. 004. Mr. Lilly contends that this process should be quasi-judicial instead of legislative.

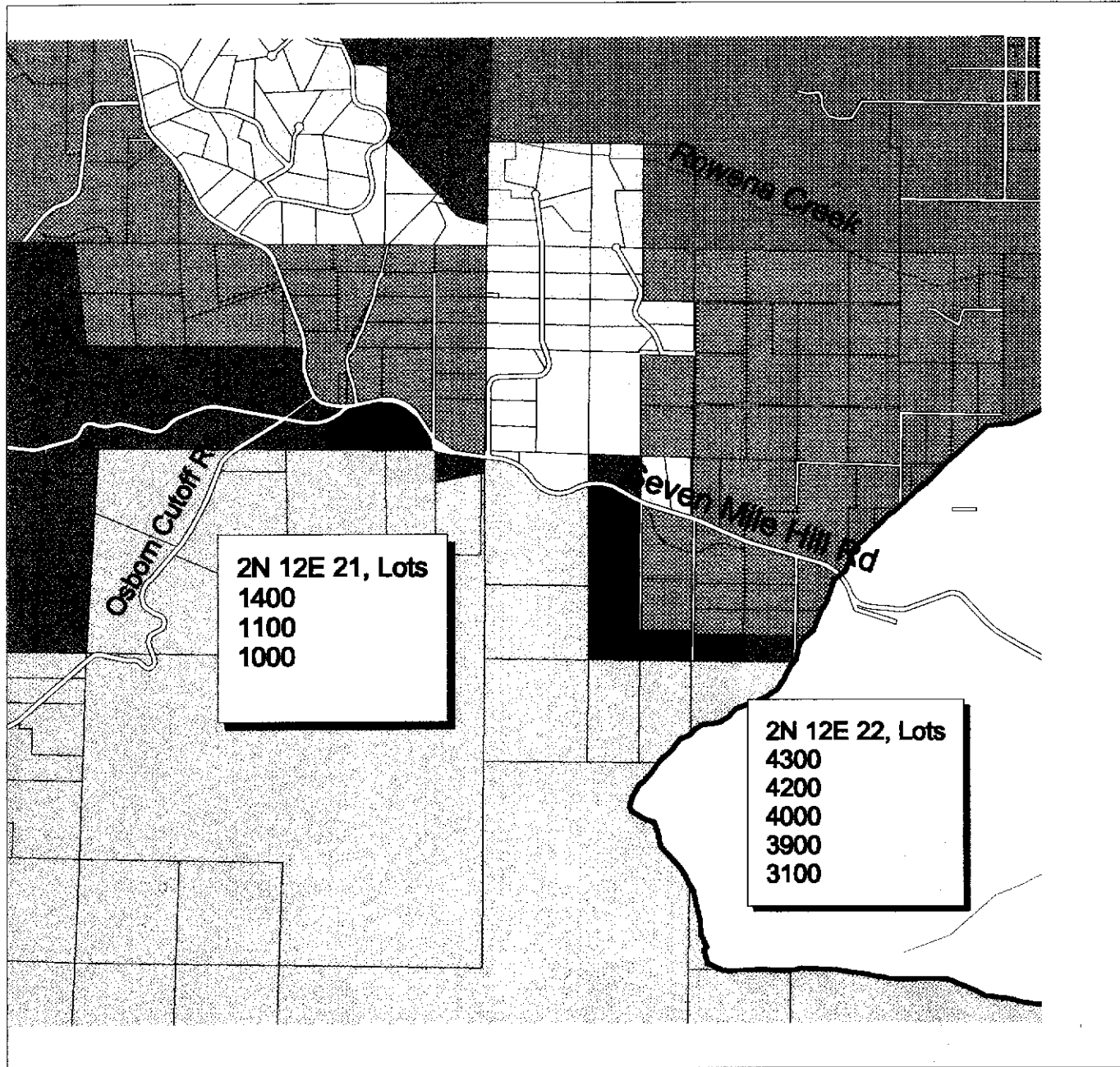
- D. The request and information relating to this zone change is part of the zone change recommendations for the Transition Lands Study Area which included rezoning 3,035 acres from "F-F(10)" to "R-R(10)". These eight properties were evaluated as part of this larger rezone. A decision was made to defer rezoning these eight parcels because one of these parcels was involved in a Oregon Land Use Board of Appeals (LUBA) appeal. It was prudent to wait for the LUBA decision.
1. Additionally, even if the county erred in determining this as a legislative process, there was no harm done to Mr. Lilly or his client Mr. Thomas. They received notice of the hearing, and were granted time to augment the Planning Commission record at the hearing. They were notified of the County Court hearing.
 2. Regarding *Dean v City of Oakland* –Mr. Lilly addressed the following three questions resulting in his conclusion that the proceedings should be quasi-judicial. The Court alternately finds the following:
 - a. *Is the process bound to result in a decision?* This request does not result in a decision for an individual property owner on a specific request. There is no applicant and no prevailing party. While the Court may take an action in deciding to uphold, deny or alter the Planning Commission recommendation, the Court generally takes just such an action in any Legislative action. The County Court action, in itself, will not allow or deny any individual land use. The Court could choose to take no action and leave the ordinances as they stand.
 - b. *Is the decision bound to apply pre-existing criteria to concrete facts?* The only pre-existing criteria applied to the proposed zone change are those in the County's code that are typically addressed in the event of either a quasi-judicial or legislative zone change.
 - c. *Is the action directed at a closely circumscribed factual situation or a relatively small number of persons?* This zone change is part of a larger whole. Total rezone recommended under the TLSA report was 3,035 acres. These eight parcels were not processed as part of the original legislative action due to a pending quasi-judicial appeal. Following remand of the quasi-judicial case involving all of these eight parcels, the County is now comfortable moving ahead to complete the originally recommended rezone over the remaining eight parcels based on the broad and inclusive facts originally presented in the TLSA report and relied upon in the initial rezoning of all but these remaining eight parcels.

The county contends that in context of the TLSA Study Area the legislative hearing process is appropriate.

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Attachment A



- TLSA Boundary**
- Parcels**
- Subject Parcels**
- Zoning**
- A-1(160)**
- A-1(40)**
- F-2(80)**
- F-F(10)**
- R-R(10)**
- R-R(5)**
- RMH-2**

Transition Lands Study Area
 Zone Change From F-F(10) To R-R(10)
 Ordinance No. 99-111
 June 1999



Wasco County GIS
 June 1999

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