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NATURE OF THE DECISION

Petitioner appeals a county decision approving an application for a comprehensive plan map amendment, zone map amendment, and an exception to Statewide Planning Goal 3 (Agricultural Land).

MOTION TO INTERVENE

Fowler Living Trust moves to intervene on the side of respondent in the appeal. There is no opposition to the motion and it is granted.

FACTS

The subject property is an approximately 32.5 acre parcel designated as Agricultural and zoned Exclusive Farm Use (EFU). The property is located approximately .3 miles north of the City of Dallas urban growth boundary (UGB). The property is bounded on the north by a parcel also owned by intervenor that is zoned Rural Commercial and serves as the headquarters for intervenor’s heavy construction services business. The property is bounded on the south by a parcel zoned EFU, and is bounded on the east and west by roadways.

Intervenor applied to change the existing comprehensive plan map designation from Agriculture to Industrial, to change the existing zoning from EFU to Rural Industrial, and to apply a limited use overlay zone to the property. The hearings officer conducted a hearing and recommended approval of the application with conditions, and the board of commissioners voted to approve the application and adopted the findings in the hearings officer’s report, along with supplemental findings. This appeal followed.

FIRST ASSIGNMENT OF ERROR

In his first assignment of error, petitioner argues in several subassignments of error that the county inadequately addressed provisions of Polk County Zoning Ordinance (PCZO) 115.050(A)(2) and (3). Those provisions generally require that the county determine that the current Agricultural comprehensive plan designation for the subject property is no longer

1 appropriate due to changing conditions in the surrounding area, and that the proposed
2 Industrial plan designation conforms to the intent of relevant comprehensive plan policies
3 and goals.¹

4 **A. First Subassignment of Error**

5 In his first subassignment of error, petitioner argues that the county failed to make
6 adequate findings regarding PCZO 115.050(A)(2) because the county failed to demonstrate
7 that changes in conditions in the area surrounding the property make the Agricultural
8 designation inappropriate for the subject property. Intervenor responds that the county’s
9 findings are adequate to explain why the existing Agricultural plan designation is no longer
10 appropriate. The hearings officer found that, due in part to the growth of the adjacent
11 commercial park, other non-resource uses in the surrounding area, parcelization of the
12 surrounding area, and the city of Dallas’ expanding urban growth boundary, the existing

¹ PCZO 115.050(A) provides in relevant part:

“Amendments to the Comprehensive Plan Map must meet one or more of the following criteria:

“(1) The Comprehensive Plan designation is erroneous and the proposed amendment would correct the error; or

“(2) The Comprehensive Plan Designation is no longer appropriate due to changing conditions in the surrounding area; and

“(3) The purpose of the Comprehensive Plan will be carried out through approval of the proposed Plan Amendment based on the following:

“(a) Evidence that the proposal conforms to the intent of relevant goals and policies in the Comprehensive Plan and the purpose and intent of the proposed land use designation.

“(b) Compliance with Oregon Revised Statutes, statewide planning goals and related administrative rules which applies to the particular property(s) or situations. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply; and

“(c) Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land.”

1 Agricultural designation is no longer appropriate. Record 54. Petitioner has not explained
2 why those findings are inadequate to demonstrate that the changing conditions in the area
3 surrounding the subject property make the Agricultural designation inappropriate. We agree
4 with intervenor that the county’s findings are adequate to explain why the existing
5 Agricultural plan designation is no longer appropriate due to changing conditions.

6 The first subassignment of error is denied.

7 **B. Second, Third, and Fourth Subassignments of Error**

8 In his second, third and fourth subassignments of error, petitioner argues that the
9 county failed to explain why the proposed plan designation change complies with PCZO
10 115.050(A)(3), which requires the county to find that the proposal conforms to the goals and
11 policies of the Polk County Comprehensive Plan (PCCP) regarding the Agricultural land
12 designation and the purpose and intent of the Industrial land designation. Intervenor
13 responds that petitioner is raising issues regarding PCZO 115.050(A)(3) for the first time in
14 his petition for review, and that such issues are therefore waived under ORS 197.763(1).²
15 Petitioner has not responded to intervenor’s assertion that petitioner failed to raise any issues
16 regarding the proposal’s compliance with PCZO 115.050(A)(3) during the proceedings
17 below. Therefore, petitioner is precluded under ORS 197.763(1) from raising the remaining
18 issues presented in his first assignment of error. *Williamson v. City of Salem*, 52 Or LUBA
19 615, 619 (2006).

20 The second through fourth subassignments of error are denied.

² ORS 197.763(1) provides:

“An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.”

1 The first assignment of error is denied.

2 **SECOND AND SIXTH ASSIGNMENTS OF ERROR**

3 In his second assignment of error, petitioner argues that the county’s findings
4 regarding compliance with OAR 660-004-020(2)(a) are inadequate because the county has
5 not explained why the state policy embodied in Goal 3 should not apply to the subject
6 property.³ In his sixth assignment of error, petitioner argues that the county’s findings
7 regarding OAR 660-004-022(1) and (3) are inadequate.⁴ Because OAR 660-004-0020(2)(a)

³ OAR 660-004-020(2) provides in relevant part:

“The four factors in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are:

“(a) ‘Reasons justify why the state policy embodied in the applicable goals should not apply’: The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires a location on resource land[.]”

⁴ OAR 660-004-022 provides in relevant part:

“An exception Under Goal 2, Part II(c) can be taken for any use not allowed by the applicable goal(s). The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule:

“(1) *For uses not specifically provided for in subsequent sections of this rule or in OAR 660-012-0070 or chapter 660, division 14, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:*

“ * * * * *

“ * * * * *

“(3) **Rural Industrial Development:** For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts include, but are not limited to, the following:

“ * * * * *

“(c) The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county’s gain from the industrial

1 and OAR 660-004-0022(1) and (3) are related rules, we address these assignments of error
2 together below.

3 **A. OAR 660-004-0020(2)(a)**

4 Petitioner argues that the county has not explained why Goal 3 policies should not
5 apply to the subject property as required by OAR 660-004-0020(2)(a). However, compliance
6 with that section of the rule is shown by demonstrating that the proposal complies with OAR
7 660-004-0022(3), which specifies appropriate reasons for an exception to the statewide
8 planning goals for “Rural Industrial Development.” *Friends of Yamhill County v. Yamhill*
9 *County*, 47 Or LUBA 508, 513-515 (2004) (“OAR 660-004-0022 prescribes ‘the types of
10 reasons that may or may not be used to justify certain types of uses not allowed on resource
11 lands’ for purposes of [Goal 2] and [the provision of OAR 660-004-0022 governing rural
12 residential development]”). We address petitioner’s challenge regarding OAR 660-004-
13 022(3) below.

14 **B. OAR 660-004-0022(1) and (3)**

15 Petitioner next argues that the county’s findings are inadequate to show compliance
16 with OAR 660-004-0022(1). However, that section of the rule is inapplicable where a
17 proposed use is provided for in another section of the rule. *Morgan v. Douglas County*, 42
18 Or LUBA 46, 52 (2002). Because the proposed use of the subject property is for Rural
19 Industrial Development on resource land outside an urban growth boundary, and that use is
20 provided for in OAR 660-004-0022(3), a showing of compliance with OAR 660-004-0022(1)
21 is not required.

22 Petitioner finally argues that the county’s findings fail to show compliance with OAR
23 660-004-0022(3)(c). Intervenor responds that neither petitioner nor any party raised an issue
24 during the proceedings below regarding whether the proposal complies with OAR 660-004-

use, and the specific transportation and resource advantages which support
the decision.” (Emphasis added)

1 0022(3)(c), and therefore petitioner is precluded from raising the issue for the first time in
2 this appeal. Petitioner has not responded to intervenor's waiver argument. Therefore,
3 petitioner is precluded from raising that issue for the first time in his petition for review.
4 ORS 197.763(1).

5 The second and sixth assignments of error are denied.

6 **THIRD ASSIGNMENT OF ERROR**

7 In his third assignment of error, petitioner argues that the county failed to
8 demonstrate compliance with OAR 660-004-0020(2)(b). OAR 660-004-0020(2)(b) requires
9 the county to perform an analysis of alternative lands and demonstrate that the proposed use
10 cannot be reasonably accommodated on other nonresource land, resource land that is
11 irrevocably committed to nonresource goals, or land within an urban growth boundary. In
12 his first subassignment of error, petitioner argues that the county's findings do not adequately
13 address existing properties located within the adjacent Polk Station Commercial Park. In his
14 second subassignment of error, petitioner argues that the county's findings do not adequately
15 address existing properties located within the Rickreall Rural Community Center, located
16 approximately two miles away from the subject property.

17 Intervenor responds that petitioner did not raise an issue below regarding the
18 availability of land in the Polk Station Commercial Park or the Rickreall Rural Community
19 Center, and he cannot raise these issues for the first time on appeal.⁵ Petitioner has not
20 responded to intervenor's assertion. Accordingly, the first and second subassignments of
21 error are denied.

22 Under his third subassignment of error, petitioner argues that the county failed to
23 consider whether the proposed use could be accommodated within the City of Dallas' UGB.

⁵ Intervenor also argues that OAR 660-004-0020(2)(b)(C) allows the alternative areas analysis to be met by a broad review of similar types of areas, rather than a review of specific alternative sites, unless another party to the local proceeding identifies specific sites. Intervenor asserts that petitioner did not identify any specific sites for review during the proceedings below. Petitioner does not dispute intervenor's assertion.

1 Intervenor responds that the county conducted the broad review of similar types of areas that
2 is required by OAR 660-004-0020(2)(b)(C), and that because petitioner nor any other party
3 to the local proceedings identified specific parcels within the UGB, a detailed evaluation of
4 specific alternative sites was not required. *See* n 5.

5 The county found that direct access to a state highway was an important requirement
6 for intervenor's business operations because intervenor operates a heavy machinery business
7 and frequently moves machinery of large size and weight. The county also noted that a
8 significant portion of intervenor's business operations occur on the adjacent parcel that is
9 located within the Polk Station Commercial Park and locating a portion of the operations at a
10 site that is physically distant from the current operations would pose significant
11 transportation, logistic, and operational problems. The county also found that available lands
12 within the Dallas UGB were constrained by the presence of wetlands and the existence of
13 incompatible uses. Record 23, 61.

14 In challenging the county's findings, petitioner points out that the city has superior
15 fire and police protection, and that the legal speed limit is lower within the UGB so that entry
16 and exit of heavy trucks within a city is safer. However, petitioner does not explain why the
17 above findings are inadequate to show why intervenor's proposed use cannot reasonably be
18 accommodated within the City of Dallas UGB. We agree with intervenor that the county has
19 adequately shown that the proposed use cannot reasonably be accommodated within City of
20 Dallas UGB.

21 The third subassignment of error is denied.

22 The third assignment of error is denied.

23 **FOURTH ASSIGNMENT OF ERROR**

24 In his fourth assignment of error, petitioner argues that the county's analysis of the
25 long term environmental, economic, social and energy (ESEE) consequences resulting from
26 the proposed use of the subject property is inadequate to comply with OAR 660-004-

1 0020(2)(c). OAR 660-004-0020(2)(c) requires the county to find that the long term ESEE
2 consequences resulting from the proposed use of the subject property are not significantly
3 more adverse than would result from the same use being located in another area *that also*
4 *requires a Goal exception.*

5 Intervenor notes, correctly, that petitioner’s arguments under the fourth assignment of
6 error focus entirely on lands located within the Polk Station Commercial Park, the Dallas
7 UGB, and the Rickreall Rural Community Center. Use of lands in those areas would not
8 require a Goal exception. While lands that would not require a Goal exception must be
9 considered under OAR 660-004-0020(2)(b), the lands that must be considered under OAR
10 660-004-0020(2)(c) are lands that would require a Goal exception. Petitioner’s argument
11 under his fourth assignment of error regarding OAR 660-004-0020(2)(c) provide no basis for
12 reversal or remand.

13 The fourth assignment of error is denied.

14 **FIFTH ASSIGNMENT OF ERROR**

15 In his fifth assignment of error, petitioner challenges the county’s finding that the
16 proposed use of the property is compatible with adjacent uses as required by OAR 660-004-
17 0020(2)(d).⁶ Petitioner contends that the county’s findings do not accurately describe uses
18 on adjacent properties or describe how the proposed use of the subject property will be
19 compatible with those uses. The majority of petitioner’s challenges are concerned with

⁶ One of the four factors that must be addressed in approving a reasons exception is OAR 660-004-0020(2)(d), which provides:

“The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. ‘Compatible’ is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.”

1 access and safety issues arising from heavy truck traffic, but also identify increased noise
2 levels that could disturb livestock, weed contamination of crops, and lighting.

3 Intervenor responds that the county accurately identified all uses surrounding the
4 subject property, including uses on the other side of the two roads that bound the property,
5 and points out that the rule indicates that “compatibility is not intended as an absolute term
6 meaning no interference or adverse impacts of any type with adjacent uses.” The county
7 found that rural industrial development is already present in the area, and that off-site noise
8 impacts would be minimal, and that conditions requiring landscaping, screening, and parking
9 would mitigate noise and visual impacts.⁷ The county also imposed other conditions to
10 mitigate for adverse impacts to surrounding properties, including lighting restrictions,
11 compliance with PCZO standards regarding noise and light, screening requirements, and
12 stormwater management. Record 24. We agree with intervenor that the county’s findings
13 regarding compatibility of the proposed use with adjacent uses are adequate.

14 The fifth assignment of error is denied.

15 **SEVENTH ASSIGNMENT OF ERROR**

16 In his seventh assignment of error, petitioner argues that the county has not
17 adequately addressed Statewide Planning Goal 12 (Transportation). Petitioner’s arguments
18 under this assignment of error are not particularly focused, and petitioner does not identify

⁷ The county found in pertinent part:

“* * * The subject property would not be the only rural industrial development within the community. Rural industrial development adjacent to this property has coexisted with residential and resource uses in the community of North Dallas for many years. Based on the list of proposed uses for the property, off site impacts to resource operations and residential uses would be minimal. The subject property would become the logical extension of an existing rural industrial development.” Record 63.

1 any specific provision in Goal 12 or the transportation planning rule that he argues the
2 county inadequately addressed.⁸

3 The county found that the proposed changes would not impact the functional
4 classification of the surrounding streets, one of which is designated in the county’s adopted
5 Transportation Systems Plan (TSP) as “minor arterial” and two of which are designated as
6 “local streets.” The county, in consultation with the Oregon Department of Transportation
7 (ODOT), also found that the average daily trips that would be generated by the allowed uses
8 in the Rural Industrial zone with a limited use overlay would not be significantly more than
9 the average daily trips that would be generated by uses allowed in the EFU zone. Although
10 the county’s findings could be clearer, we understand the county to have found that, based on
11 the similarity of the projected average daily trips in the EFU zone and the Rural Industrial
12 zone, the proposed changes would not reduce the performance of the adjacent streets below
13 the minimum acceptable level identified in the TSP, under OAR 660-012-0060(1)(c).

⁸ OAR 660-012-0060(1), the transportation planning rule, requires in pertinent part that a local government adopt mitigation measures if an amendment to a comprehensive plan would “significantly affect an existing or planned transportation facility.” A plan or land use regulation amendment significantly affects an existing or planned transportation facility if it would:

- “(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
- “(b) Change standards implementing a functional classification system; or
- “(c) As measured at the end of the planning period identified in the adopted transportation system plan:
 - “(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
 - “(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
 - “(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.”

1 Petitioner does not explain why the county's findings that the proposed map and zone change
2 would not affect the functional classification of the adjacent streets and would not reduce the
3 performance of the transportation facility below a minimum acceptable level are inadequate.

4 Petitioner also argues that the county has not adequately addressed traffic safety
5 issues. However, petitioner cites no applicable code provision or rule that requires the
6 county to consider safety issues, and does not otherwise explain the significance of traffic
7 safety issues to the application. As such, petitioner states no basis for remand under the
8 seventh assignment of error.

9 The seventh assignment of error is denied.

10 The county's decision is affirmed.