

MEMORANDUM

OFFICE OF CITY ATTORNEY

DATE: February 10, 2105 VIA EMAIL

TO: Gary Darnielle, Hearings Officer

FROM: Lauren A. King, Assistant City Attorney *LAJK*

RE: Trudy E. Logan Land Use Application ("Along Came Trudy")
Case Law Stated in Application for Interpretation of a New Use

Introduction

This Memorandum sets forth the applicable criteria to the above-referenced land use application. Please read it in concert with the staff report.

This Memorandum also examines the cases and law proffered by Applicant's attorney. That examination reveals the Applicant's materials are neither legally on point nor factually relevant to this application.

Applicable Criteria

Applicant requested an interpretation of new uses, terms or phrases as to whether a banquet, wedding and event venue may occur as a new use on land within Springfield's Urban Growth Boundary (UGB) that is zoned Low Density Residential (LDR)/ Urban Fringe- 10 (UF-10). Approximately 0.9 acres of the subject property is located within Springfield's UGB, the remaining 12 acres of the property is located outside the UGB and within Lane County's jurisdiction. This application only applies to the 0.9 acres located within the City of Springfield's UGB. The City has no jurisdiction outside the UGB.

Interpretation of new uses is governed by the Springfield Development Code Section 5.11-100. The purpose of an interpretation is to consider the applicability of new uses within each zoning district that are not specifically identified in this Code. SDC 5.11-105. The criteria for interpretation states that a new use may be considered a permitted use when, after consultation with the City Attorney or other City staff, the Director determines that the new use: has the characteristics of one or more use categories currently listed in the applicable zoning district; is similar to other permitted uses in operational characteristics, including but not limited to, traffic generation, parking or density; and is consistent with all land use policies in [the SDC] which are applicable to the particular zoning district. SDC 5.11-120(B). The purpose of the interpretation provision is to allow the City the flexibility to allow a particular new use in a zone, even if that use was not expressly listed by the Code. However, the criteria for an interpretation are permissive and do not require the City to allow a new use.

Additionally, this application is not a comprehensive plan or zoning amendment. An application for an interpretation is not parcel or site specific—an approved interpretation applies to the entire zoning district. Should the Hearings Officer find that a "banquet, wedding and event venue" is allowed in the LDR/ UF-10 as a permitted new use, that use would be allowed on all properties zoned LDR/ UF-10.

Goal Two Exceptions

Applicant incorrectly relies on several cases that discuss the meaning of the term "urban use" as it appears in OAR 660-004 and Goal 14. Oregon Administrative Rule 660-004 interprets the requirements of Goal 2 and ORS 197.732. Goal 2 and ORS 197.732 provide the process by which a local government may adopt an exception to a statewide planning goal.

An "exception" is a comprehensive plan provision, including an amendment to an acknowledged plan, that is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability; does not comply with some or all goal requirements applicable to the subject properties or situations; and complies with ORS 197.732(2). ORS 197.732

The OARs that govern the exception process include specific substantive standards for applying an exception to Goal 14 to rural lands. The purpose of that rule is to specify how Goal 14 "Urbanization" applies to rural lands in acknowledged exception areas for planned residential uses. OAR 660-004-0040. The "rule applies to lands that are not within an urban growth boundary..." OAR 660-004-0040(2)(a) (emphasis added). The rule does not apply to land inside an acknowledged urban growth boundary. OAR 660-004-0040(2)(c)(A).

Applicant misconstrues the term "urban use" as found in case law on Goal 2 exceptions to apply to the term as it is used in the Springfield Development Code. The purpose of the UF-10 Overlay District is to effectively control the potential for urban sprawl and scattered urbanization to achieve compact urban growth. SDC 3.3-805. Accordingly, the UF-10 limits the division of land and prohibits urban development of unincorporated urbanizable land. In the UF-10 Overlay District, the schedule of use categories outlines the permitted uses based on the underlying zones. With the exception of areas designated Government and Education, urban uses not listed in the UF-10 Overlay district are prohibited. SDC 3.3-815.

Applicant attempts to connect the term "urban use" found in the following string of cases discussing Goal 2 exceptions to the meaning of the term found in SDC. This is not an application to clarify the meaning of "urban use" as it is found in the SDC, rather this is an application to interpret whether a "banquet, wedding and event venue" is allowed as a new permitted use. To meet the City's stated purpose of controlling scattered urbanization, the schedule of use categories strictly prohibits new permitted uses when the underlying zoning district is residential. SDC 3.3-815. Accordingly, the City Attorney finds that the following cases are not legally on point or factually relevant to the instant application.

1000 Friends of Oregon v. LCDC and Curry County ("Curry County"), 301 Or 447, 456, 724 P2d 268 (1986)

In *Curry County*, petitioner appealed LCDC's decision to acknowledge a county comprehensive plan as complying with Statewide Planning goals. The Supreme Court held that the county and the Commission had to determine whether the plan allowed no "urban uses" outside of urban growth boundaries unless those "urban uses" were supported by exceptions to land use planning Goal 14 prior to acknowledgement that the plan complied with the goals. *Curry County*, 301 Or at 521. To make that determination, LCDC and the county must enter findings stating in which exception areas the plan allows "urban uses."

The Court explains, at the very start of the opinion, that by "urban uses" the Court refers to the term that LCDC employs in the text of Statewide Planning Goal 14. *Curry County*, 301 Or at 448, footnote 1. The Court notes the necessity of having a working definition of "urban uses"

before resolving the questions that relate to the questions at issue with regard to the county's comprehensive plan.

Despite of the absence of a definition, the Court indicated that certain factors *could* be considered in determining whether a use is urban or rural for the purposes of a Goal 2 exception. *Id.* at 505, 507. These factors are referred to as the "*Curry County* factors" in the cases below and the Applicant attempts to articulate how the proposed use would be rural under these factors.

Neither the factors nor any other discussion of a Goal 2 exception is relevant to this Application. This is not an application for a Goal 2 exception, nor would a Goal 2 exception be required.

Cox v. Yamhill, 29 Or LUBA 263 (1995)

Applicant supports his assertion that there is no definition of "urban uses" in Goal 14 and that the proposed use meets the "*Curry County* factors" through a string of cases that rely on *Curry County*. Applicant states that in *Cox*, LUBA reasserts that there is no definition of urban use.

Cox is an appeal of a county ordinance adopting an exception to Statewide Planning Goal 3 and an amendment to the comprehensive plan map that changed the zone from EFU to Public Assembly Institutional. Accordingly, LUBA considered whether the county complied with the ORS and OARs with regards to establishing that the amendment qualifies as an exception. The application before the Hearings Officer does not involve a comprehensive plan amendment and does not require a Goal 2 exemption.

Baxter v. Coos County, 58 Or LUBA 624 (2009)

The applicant refers to *Baxter* as an example of a case where LUBA or the courts relied on the guidance provided in *1000 Friends v. LCDC and Curry County*. At issue in *Baxter* is the county's decision to approve a conditional use permit to site an RV park on a parcel that is entirely zoned Qualified-Recreation. LUBA initially remanded the county's decision after determining that the proposed development was an urban use of rural land that was prohibited without an exception to Statewide Planning Goal 14 and that the disposing of wastewater generated by the development was prohibition without an exception to Statewide Planning Goal 11. *Oregon Shores Conservation Coalition v. Coos County ("Indian Point I," 55 Or LUBA 545 at 557, 562. Baxter* followed the remand. In *Baxter*, LUBA considers whether the use was still prohibited without Goal 14 and 11 exceptions after certain modifications to the RV Park. LUBA concluded, as it did in *Indian Point I*, that the conditional use permit is prohibited by Goals 14 and 11 and reversed the county's decision because it was prohibited as a matter of law. *Baxter*, 58 Or LUBA at 636.

Columbia Riverkeeper v. Columbia County, 2014 WL 4353452 (Or Luba) (2014)

Applicant quotes *Columbia Riverkeeper* dicta that LCDC has not adopted any rule-making that clarifies how to answer the question of whether an industrial use is urban or rural in nature. *Columbia Riverkeeper*, 2014 WL 4353452 at 23. As with the cases above, the case relates to a comprehensive plan amendment, zone change, and the designation of an exception area under Goal 2. Whether or not LCDC has adopted any rules on the meaning of "urban use" for the purposes of a Goal 2 exception is not relevant to this Application.

Devon Oil Co. v. Morrow County, 2014 WL 7467094 (Or Luba) (2014)

In an effort to apply the "*Curry County* factors," Applicant relies on *Devin Oil Co.* as supporting the proposition that the proposed banquet, wedding and event venue is not accurately viewed

as serving any particular geographic area. (Applicant attributes a quote to *Devin Oil Co*, however, we are unable to find this language).

As with the other cases, *Devin Oil* involves whether a Goal 2 exception is required for a particular use. This is not an application for a comprehensive plan amendment and involves land within Springfield's Urban Growth Boundary; Goal 2 exceptions do not apply here. None of the cases that discuss whether a use is urban or rural for the purposes of a Goal 2 exception are on point.

"Home Occupation" in County Planning

Under Oregon law, the county may designate the establishment of home occupation and parking of vehicles in any zone. ORS 215.448(1). However, in exclusive farm use, forest, or mixed farm and forest zones that allow residential uses, certain standards apply. ORS 215.448(1)(a)-(c). Oregon Revised Statute Chapter 215 applies to county planning, there is no analogous statute for city planning that governs whether and how home occupations must be regulated. Accordingly, the Hearings Officer may only look to the Springfield Development Code to determine what constitutes as a home occupation.

White v. Lane County, 2013 WL 6913197 (Or Luba) (2013)

Applicant asserts that the proposed use is similar to the use in *White*. In *White* the petitioners appealed a county board of commissioners' decision approving a temporary use permit to operate a commercial event, a wedding, on property that was zoned forest use. While the facts may be similar (both cases involve an unpermitted wedding venue), there is no similarity with regard to the legal application. Oregon Revised Statute 215.448 applies to resource zones and land outside the urban growth boundary. The property at issue here is within Springfield's Urban Growth Boundary, governed by Springfield Development Code, and is not a resource zoned parcel.

Conclusion

The City Attorney asks that the Hearings Officer apply the applicable criteria for an interpretation when determining whether the proposed use is permitted. None of the Applicant's discussion applies to the question of whether an banquet, wedding and event venue could be interpreted as a new use allowed in Springfield's Urban Growth Boundary on property zoned LDR/ UF-10.

cc: Ed Spinney
Jim Donovan
Greg Mott