

CU 18-025

City of Aurora Appeal Notes

June 6, 2018.

Introduction

The decision is incorrect because it applies a variety of regulations from the City of Aurora Comprehensive Plan, the Marion County Industrial Commercial Zone, and the Marion County Commercial zone, to this application in the Marion County UT-20 zone, which is a farm zone that prohibits industrial use.

The proposed wholesale health supplement business is a warehouse and distribution center that is an industrial use that is not allowed in the UT-20 zone.

The UT-20 zone is a “farm zone, consistent with ORS 215.203.” MCC 16.13.300. It is classified by Marion County as resource land. MCC 16.13.300.B.

ORS 215.203(1) restricts the use of farm-zoned land to farm use although ORS 215.283(1) lists the nonfarm uses that are allowed subject to state administrative rules. One permitted nonfarm use is “a facility for the processing of farm crops.” ORS 215.283(1)(r). However, the applicant states: “[a]ll products received by the business are prepackaged from the manufacturers.” The proposed use is not a facility for the processing of farm crops.

The decision correctly classifies the proposed use as a warehouse and distribution center, which is not listed as a permitted use or as a conditional use in the UT zone. MCC 16.13.010 and .020. A warehouse and distribution center is also not allowed as a permitted use or as a conditional use in a farm zone by state statute or administrative rule. ORS 215.203(2)(a) and .283(1); OAR 660-033-0120 Table.

The decision wrongfully applies the development standards of the CO and IC zones, which cannot be applied in the UT zone without a comprehensive plan map amendment and zone change. This hybridization of two county zones and the city comprehensive plan, and simultaneous disregarding of the applicable UT-20 zone and state farm use regulations, is not authorized by the text of the zoning code, state statute, or state administrative rule. MCC 16.13.020.Q, ORS 215.203(2)(a) and .283(1); OAR 660-033-0120 Table.

The proposed warehouse and distribution center use violates Urban Land Use Goal h and Urban Growth Policies 1 and 3 of the Comprehensive Plan.

The Urban Growth policies of the county comprehensive plan are intended to facilitate an orderly transition to efficient urban development. MCC 16.13.300. Development of industrial land use is intended to only occur “within urbanized areas unless an industry specifically is best suited to a rural site.” Comprehensive Plan, Urban Land Use Goal h.

The proposed wholesale health supplement business is classified as industrial use SIC 51 – Wholesale Trade – Nondurable Goods in the Standard Industrial Classification Directory. It is similarly classified in the zoning code. MCC 16.09.010.33. The subject property is outside the city limits, and lacks public water and sewer service, and therefore the site is not within an urbanized area.

The decision does not identify any reasons or evidence to explain why this industry - the wholesale distribution of health supplements - is best suited to a rural site. The city believes this industrial use is best suited to an urbanized site. For these reasons, the decision violates Urban Land Use Goal h.

Urban Growth Policy 1 states:

The type and manner of development of the urbanizable land shall be based upon each community’s land use proposals and development standards that are jointly agreed upon by each city and Marion County and are consistent with the LCDC Goals.

For this application, clearly the city and county do not agree how this urbanizable land should be developed. The city challenges the county’s application of industrial and commercial zoning to the UT-20 zone as being inconsistent with the county’s own code and state land use regulations. LCDC Goal 14 states: “Land within urban growth boundaries shall be considered available for urban development consistent with plans for the provision of urban facilities and services.” The city comment letter explained that annexation was appropriate and consistent with city plans for the provision of urban facilities and services. The decision is not consistent with those plans. It approves the industrial use without any provision for public water or sewer service, or even verification of appropriate private sewer service.

In addition, Goal 14 allows industrial development on certain lands *outside* urban growth boundaries. It does not authorize industrial development on property within an urban growth boundary that is outside a city. The decision violates Policy 1 and Goal 14.

Urban Growth Policy 3 is that development of the urban area “should proceed from its center outward.” The decision approves the opposite; that is, an industrial use outside the city limits notwithstanding the availability of vacant industrial land within the city. This violates Policy 3.

The Industrial Commercial (IC) zone is not the most restrictive zone consistent with the applicable comprehensive plan designation.

The decision wrongfully applies the City of Aurora’s industrial comprehensive plan designation as if it was an approval criterion for this county land use application, and as the justification for approval of the proposed industrial use. This misconstrues MCC 16.13.020.Q, which conditionally allows uses that are allowed “in the most restrictive zone...consistent with the land use designation.” The decision posits that the most restrictive “zone” in this instance is IC because that county zone is consistent with the city comprehensive plan designation.

This is erroneous for several reasons. First, the county comprehensive plan designation is resource land. MCC 16.13.300.B. The most restrictive zone for this designation is UT-20, a farm zone, and the warehouse and distribution center for prepackaged products is prohibited in a farm zone. ORS 215.203(2)(a) and .283(1); OAR 660-033-0120 Table. Even the zoning code text prohibits the application of less restrictive use regulations from a different base zone. “In the event of a conflict between a provision of this chapter and a more restrictive provision of this title applicable to a particular lot, structure or use, the more restrictive provision shall apply.” MCC 16.13.100.

Second, there is no text in MCC 16.13 to support reliance on city comprehensive plan designations to effectively change the allowed uses development standards in the UT-20 zone. The text includes several references to “city zoning regulations upon annexation” but does not state that city comprehensive plan designations will be applied to an application in the UT-20 zone. Nor does the text state that depending on the city comprehensive plan designation, the county may approve uses allowed in different zones and apply development standards from other zones, instead of applying the use restrictions and the development standards of the UT-20 zone.

Third, the UT-20 zone use and development standards and additional standards and regulations referenced in MCC Chapter 16.24 and 16.26 through 16.34 apply. MCC 16.13.100. The decision wrongfully applies the very different use regulations and development standards of the IC zone in MCC 16.09 and the CO zone standards in MCC 16.06 to this application. The subject property is not within the CO or IC zones

and application of their regulations to this application is not consistent with the text of the applicable UT-20 zone standards in MCC 16.13. The UT-20 text does list development standards from many other chapters that apply in the UT-20 zone, such as standards in the chapters on floodplains, the greenway, airports, geologic hazards, parking, etc. These chapters are not base zones, and there is no authority in the text to apply use regulations and development standards from different base zones to an application in the UT-20 zone. Moreover, the thorough listing of the development standards from other chapters that do apply precludes the application of different standards that are not listed.

The proposed warehouse and distribution use cannot be approved because there is not a favorable site evaluation from the county sanitarian.

The decision is a land “use” approval. A favorable site evaluation from the county sanitarian is required prior to the approval of a “use”. MCC 16.13.320.E. In this instance, the application does not include the mandatory favorable site evaluation, and therefore cannot be approved.

The decision states that county policy is to require septic approval as a condition of the building permit. A building permit approves a structure; it does not approve a land use, and therefore the policy and the resulting decision contradict the plain text of the code.

Conclusion

The City of Aurora appreciates the county’s effort to assist this small business. Unfortunately, the decision relies on several inapplicable regulations instead of applying the regulations in effect. It uses regulations from the City of Aurora Comprehensive Plan, the Marion County Industrial Commercial Zone, and the Marion County Commercial zone, whereas it must apply the regulations in the Marion County UT-20 zone, which is a farm zone that prohibits industrial use.