

**MALHEUR COUNTY COURT MINUTES
SPECIAL MEETING
JOINT PUBLIC HEARING WITH THE CITY OF NYSSA**

February 9, 2021

The Malheur County Court held a Special Meeting with the City of Nyssa Council. The meeting was held electronically with the County Court members present at the Courthouse in Vale and the Nyssa City Council members present at Nyssa City Hall. Present from Malheur County were Judge Dan Joyce, Commissioner Don Hodge, and Commissioner Ron Jacobs; and staff members Planner Eric Evans and Management Assistant Tatiana Burgess. Present from the City of Nyssa were City Manager Jim Maret and council members. The meeting was opened at 7:00 p.m. The purpose of the Special Meeting was to hold a joint public hearing to consider the request for a zone change from Nyssa N-R2/UGA to Nyssa N-C/UGA to include the property commonly identified as Map 19S4732CB, Tax Lot 1000, thereby amending the Nyssa Urban Growth Area/Boundary (UGA/UGB). Notice of the hearing was published in the Argus Observer, posted on the County website and emailed to the Argus Observer, Malheur Enterprise, and those persons who have requested notice. The meeting was audio recorded. The agenda is recorded as instrument # 2021-0572

JOINT PUBLIC HEARING WITH CITY OF NYSSA

Landowner: Anchorman Properties LLC

Applicant's Representative: Wyatt Baum, Baum Smith LLC

Property Address: 803 Commercial Avenue, Nyssa

The City of Nyssa opened their hearing and established they had a quorum; the County Court also opened their hearing and had a quorum.

Planner Eric Evans moderated the hearing.

Mr. Evans read the following into the record:

Now is the time to hear an application to amend the Nyssa Urban Growth Area/Boundary (UGA/UGB) to include property commonly identified as Map 19S47E32, Tax Lot 1000 and amend the zoning Nyssa-Residential 2/UGA to Nyssa-Commercial/UGA. County Planning Department File No. 2020-10-011.

When called to speak please state your name, address and title (if any) for the record. There will be a general time limit for testimony of five minutes. The applicant's initial presentation will be 20 minutes; with a rebuttal of 10 minutes. All testimony and questions shall be directed through myself, the mediator. Testimony and questions should not be directed to staff or directly to witnesses.

Do any members of the Nyssa City Council or Malheur County Court need to abstain, disclose conflicts, disclose biases, or disclose any ex parte communications or site visits? The Nyssa Mayor disclosed ex parte communication.

Does anyone object to any members of the Nyssa City Council or Malheur County Court hearing this matter? There was none.

Does anyone challenge the Nyssa City Council or Malheur County Court's jurisdiction to hear this matter? There was none.

Mr. Evans read the following land use statements into the record as required by Oregon land use law:

The applicable substantive criteria upon which the application will be decided are found in Oregon State laws and rules as well as local code provisions, which are specifically set out in the Staff Report and include: Malheur County Code: MCC 6-10-7; Joint Management Agreement between City of Nyssa and Malheur County; Nyssa Municipal Code 9-4E & 9-4F; Statewide Planning Goals 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and their respective administrative rules.

Testimony, arguments, and evidence presented must be directed toward these approval criteria or other criteria in state law, the Malheur County Comprehensive Plan, the Malheur County Code, or the Nyssa Municipal Code that the speaker believes to apply to the decision. The failure of anyone to raise an issue accompanied by statements or evidence sufficient to afford the decision makers and the parties the opportunity to respond to the issue will preclude appeal on that issue. An issue that may be the basis of an appeal must be raised no later than the close of the record. Such issues must be raised and accompanied by statements or evidence sufficient to afford the decision makers and the parties an adequate opportunity to respond to each issue. Failure to raise an issue may preclude raising it before Land Use Board of Appeals (LUBA). The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the decision makers to respond to the issue precludes an appeal or an action for damages to circuit court.

Mr. Evans gave his Staff Report.

The subject property is owned by Anchorman Properties LLC - owners are Marc and Tamara Bybee. The current use of the property is storage buildings and chemical tanks. The Bybee's currently operate agricultural packing businesses on the surrounding lots zoned N-C and N-I. As part of those businesses the Bybee's employ up to 30 individuals, all residents of Nyssa and the surrounding area. It is the intent of the Bybee's to extend their business operations into the surrounding land they own. The Bybee's have begun that process to change the zoning on property within the City limits. Tax Lot 1000 is in the Urban Growth Area and is subject to the Joint

Management Agreement between the County and the City and that is the purpose of tonight's hearing. The property is 0.87 acres and formally housed Nyssa Co-op chemical storage tanks.

Applicant testimony was provided by the Applicant's Representative, Wyatt Baum and by Applicant Marc Bybee.

Wyatt Baum, Baum Smith LLC, 808 Adams Avenue, La Grande OR 97850: I'm essentially going to focus on two of the goals from the Comprehensive Plan (inaudible) land use goals that Mr. Evans touched on. Those would be Goal 9 - Economic Development and Goal 10 - Housing. With respect to Goal 9 - Economic Development, and this is all in the staff report, the Bybee's initially attempted this zone change in 2019. As part of that process their focus was to increase their business to the benefit of the City and surrounding area and increase that business by increasing their dry storage facilities. As part of the development process for this zone change and the zone change that's before the City that's going to go before the City Council Thursday, the Bybee's did receive letters of support both from Courtney Crowell, the Eastern Oregon Coordinator for Regional Solutions for the Office of the Governor, the Governor's Office submitted a letter in support of the proposed change as it would promote economic growth in the area. The letter is included as exhibits to the application and so was the letter from Greg Smith, the director of the Malheur County Development Corporation also submitted a letter in favor of these changes. (inaudible) specifically addressed that Fiesta Farms and the changes on the property across the street from tax lot 1000 discussed (inaudible) Specifically noted in these letters was support for the industry being proposed by the Bybee's, which is onion, shipping and packing. The proposed development uses existing industries to capture the resources of the local labor pool as the proposed use is located next to land currently owned and used by the Bybee's for a similar purpose. One of the most important things we have developed through our findings and through this discussion, which we've had multiple times now, is that back in 2018, the County and City of Nyssa held a joint public hearing to discuss among other things, the Treasure Valley Reload Center. Greg Winterowd, of Winterbrook Planning prepared findings for that hearing. The findings were adopted by the County and City and accepted by them back in 2018 and those findings reviewed various issues from the (inaudible) economic development analysis going all the way back to 2014. The analysis acknowledges various changes since 2014 in Nyssa and one of those is, principally several agricultural processing, warehouse and distribution firms have moved their operations out of the area to Idaho. Permitting the proposed change would address some of the out-migration that have been occurring with processing and warehouse facilities and allow the Bybee's to expand their facility.

Of more concern, based on the hearings we've had both with the City and County, is the housing Goal which is Goal 10. This is the goal the State really wants to focus on making sure there's enough residential development in the area to expand into residential development in the City of Nyssa. Some of the things I'd like to point out in the City, the City has recently converted UGB commercial land to residential use via a variance process to add to the inventory of residential lots for the City. The City currently provides for an inventory of housing and areas for residential development. And as set out in the Urbanization goal, the City currently has significant amounts

of land in the UGB already set aside for residential growth. The proposed changes by the Bybee's before you tonight do not affect any existing housing requirements of the City. One of the other things we looked at was population growth (inaudible) in the surrounding areas. If you look at the US Census Bureau data listed on page 6 of the staff report, according to the US Census Bureau the population of Nyssa in 2018 was roughly 3,175. In 2015 it was 3,189. Not a significant difference but it can show that there's been decline. In 2010 it was 3,240. Though not significant the change does show a downward trend in population in the surrounding areas. At the time the Comprehensive Plan was developed for the City of Nyssa, the population of Nyssa was expected to hit 5,155 by the year 2000. The plan was based on the number coming to fruition and the need for an additional 764 housing units in that area. But as we can see the City of Nyssa and the area has not hit the estimated goal of 5,155 people by the year 2000. And now 20 years later we are actually at a decline in population. The plan the city implemented took into consideration this projected growth and provided for it through the UGB and that would address the ability to grow into that area. In reviewing the findings of the Winterbrook Planning back in 2018 (inaudible) but there were some findings that were provided to the City and County and both bodies adopted these findings in 2018 (inaudible) and this is a part of the report for the County but it says essentially, Nyssa has not grown substantially since the Comprehensive Plan was adopted in 1982 and is forecast to lose population in the future due to out-migration. To reverse the downward trend in population growth, Nyssa is committed to bring new jobs to the community. The Treasure Valley Reload Center Industrial Park provides an unprecedented opportunity to achieve this objective. Although there is more than enough buildable residential land within the Nyssa UGA to accommodate planned growth, Nyssa is committed to retaining a substantial residential land supply to provide the opportunity for future residential development that may result from planned industrial and commercial employment. (inaudible) everybody pay attention to, it went on to say, that there are at least 165 more buildable acres than needed to accommodate residential needs of the next 20 years. That finding was adopted in 2018 by both the City and County; they found that at that point in time the City of Nyssa had 165 more buildable acres than needed to accommodate the residential growth through 2038. This determination made in 2018 shows, in connection with our (inaudible) from the Census Bureau that the population has actually declined shows that there is more than enough residential buildable lots in the City of Nyssa and my clients and I propose a, and I know that we submitted exhibits at the last hearing, I don't know if those were circulated as far as this hearing also, but those exhibits show essentially the location of tax lot 1000 (inaudible) Commercial Avenue and they also show the location of (inaudible). So, my clients come before you today to request that you allow the change to occur so they can take the already existing building and storage facilities on their property and approve them and bring them within the code and then eventually establish an additional storage shed which will help them grow their business here in Nyssa and allow Nyssa to grow economically. And now I turn the time over to Mr. Bybee.

Mark Bybee, 305 Commercial Avenue, Nyssa: This is a tough thing for me to talk about because I feel like it's just an invitation to come before you and get picked on but I'm willing to do it again because I think, and I know in my heart, that this is a project that is good for the City of Nyssa and I don't see any reason not to do it. Tax lot 1000, which was basically where the CO-OP fertilizer plant was, was already used for more or less commercial industrial things for as long as I can

remember while they were there. I don't see much difference between that and what I want to do. The traffic they had is comparable to traffic I would have. Noise I think is comparable. Different seasons of course. In my heart I just look at this as a logical thing for the City of Nyssa to support businesses that have been here, in my case, since the 40's. And of course, things evolve in supporting, I don't think anyone's business has hopefully gotten smaller since the 40's, things progress, things change and I think we are good citizens of the town, we take care of our property, we don't do anything in my opinion in a half manner, everything we do is done well and right and looks good. And right now, we're talking about a piece of property that doesn't look good, it looks run down, it needs taken care of. It's just real logical in my mind good stuff for the City to approve this project. That's all I have at this time, thank you for taking this under consideration.

Testimony in support of the matter were received from: Jason Pearson, Dan Corn, Tawni Maxwell, Larry Wilson, Logan Skeen, John Palomarez, and Weston Schulthies.

No proponent testimony was received.

There was no public agency testimony.

Mr. Evans commented that he had been in communication with Jean Dahlquist with the Fair Housing Council of Oregon. Mr. Baum had revised the Goal 10 - Housing section of the Staff Report and that document had been forwarded to Jean Dahlquist. The Fair Housing Council of Oregon Board had reviewed and was agreeable with the changes. The Fair Housing Council was not necessarily in favor of the proposed zone change but they were not necessarily in opposition to it either.

Mr. Evans provided his staff summary and recommendation and explained that the Malheur County Planning Department recommended approval of the proposed action.

Applicant rebuttal or closing statement was asked for.

Mr. Baum had nothing further.

Mr. Bybee: I could talk about this all night, but I'd just like to thank the proponents. It's part of the reason I want to stay here because we have an awesome community here and when we let it thrive (inaudible) it's just a great community and I sincerely would hate to have to leave it.

Commissioner Jacobs moved to close the County hearing. Commissioner Hodge seconded and the motion passed unanimously.

Nyssa City Council closed their hearing and deliberated.

The Nyssa City Council unanimously accepted and approved the Findings of Fact based on the information, findings and conclusions set forth in the Staff Report and approve the request for a zone change and adoption of their ordinance.

Commissioner Jacobs moved that the County Court accept and approve the findings of fact as set forth in County Planning Action 2020-10-011 based on the information, findings and conclusions set forth in the Staff Report. Commissioner Hodge seconded and the motion passed unanimously. Commissioner Jacobs moved that the request for a zone change from Nyssa N-R2/UGA to Nyssa N-C/UGA to include the property commonly identified as Map 19S4732CB TL 1000 thereby amending the Nyssa Urban Growth Area/Boundary (UGA/UGB), as set forth in County Planning Action 2020-10-011 be approved, based on the information, findings and conclusions set forth in the Staff Report, and adoption of Malheur County Ordinance No. 227. See instrument #2021-0575

COURT ADJOURNMENT

The meeting was adjourned.