

FINDINGS OF FACT

Planning Department File No. 2018-10-012

CONDITIONAL USE APPLICATION FOR ONE NON-FARM DWELLING

Planning Commission Meeting Dates: November 29, 2018 (tentative denial after hearing);
January 24, 2019 (adopt findings)

1. **APPLICANT:** Scott S. & Drenda Browen
789 Mendiola Road
Nyssa, OR 97913

OWNER OF RECORD: Scott S. & Drenda Browen
789 Mendiola Road
Nyssa, OR 97913
2. **PROPOSED ACTION:** Conditional Use Permit for a non-farm dwelling in the Exclusive Farm Use (EFU) Zone.
3. **PROPERTY IDENTIFICATION:** Section 11, Tax Lot 1301, T21S, R46E; Assessors Map 21S46E11.
4. **PROPERTY LOCATION AND DIRECTIONS:** Off of Hwy 201 go west on Mendiola Road. Just past 764 Mendiola Road and the drain ditch. Property is on the north side of the road.
5. **ZONING:** Exclusive Farm Use.
6. **PROPERTY:** The property size is 4.75 acres.
7. **PROPERTY USE:** Approximately 80% is cultivated and irrigated. Approximately 20% ditch bank and weeds.
8. **SURROUNDING PROPERTY USES:** Most surrounding land is farm cultivated with flood irrigation, wheel lines, and pivot lines.
9. **ACCESS:** Off Mendiola Road.
10. **SANITATION REQUIREMENTS:** A DEQ approved sanitation system would be required.

11. **FIRE PROTECTION:** The property is within the boundaries of the Adrian Rural Fire Protection District.
12. **NATURAL HAZARDS:** None known.
13. **WATER RIGHTS:** 3.3 acres of water rights were voluntarily transferred from this property to another piece of property owned by the landowners/applicants.
14. **SOIL TYPE:** Soil on the property is class III if irrigated and class IV if non-irrigated.
15. **ZONING HISTORY:** A series of consecutive property line adjustments established the property at its current location with a final approval date of August 17, 2018.

SUMMARY OF FINDINGS: This application is denied because the subject property is not eligible for a non-farm dwelling under ORS 215.284 (2), ORS 215.284 (7) or the Malheur County Code. The property, as currently located, was established through a series of consecutive property line adjustments with a final approval date of August 17, 2018. Although property line adjustments are permitted in the EFU zone, it does not necessarily mean that the resulting property is eligible for development.

FINDINGS OF FACT ADDRESSING GENERAL CRITERIA FOR SUITABILITY OF PROPOSED CONDITIONAL USE:

A. Comprehensive Plan Goals as applicable:

The Malheur County Comprehensive Plan, Goal 1:

“To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.”

The Malheur County Planning Department issued a public notice in the Argus Observer on November 11, 2018. All landowners within 750’ of the property were notified of the proposed conditional use application on November 7, 2018. A quasi-judicial land use hearing was held on November 29, 2018. Nearby landowners testified at the hearing.

The Malheur County Comprehensive Plan, Goal 3:

“A non-farm dwelling in an agricultural zone will be allowed where:

- a. It is compatible with established or possible future farm uses;
- b. It will not now, or in the future, interfere with established farm practices;
- c. It will not alter the stability of the overall land use pattern of the area, and;
- d. It is situated on land generally unsuitable for the production of farm crops and livestock.”

Based upon information submitted in the record and from opponent testimony, the proposed non-farm dwelling is not compatible with and will interfere with established farm practices; and will alter the stability of the overall land use pattern of the area. Moreover, the subject property is suitable for the production of crops as it consists of class III/IV soils, had water rights and historically produced farm crops.

The Malheur County Comprehensive Plan, Goal 10:

“Housing will be encouraged on land with the least agricultural productivity, in locations that complement existing development, makes the most efficient use of required facilities, and presents the least conflict with agriculture in the area.”

The subject property is class III soils if irrigated and class IV soils if not irrigated. Historically, the property had 3.3 acres of water rights. The property owner voluntarily transferred those water rights to a different 123- acre property used for farming. Therefore, the subject property is suitable for the production of crops and conflicts with Goal 10.

B. Specific Plan recommendations:

Specific plan recommendations are considered simultaneously with the specific criteria set forth in Malheur County Code 6-6-8. MCC Section 6-6-8 is entitled Specific Criteria to Evaluate Suitability. If the specific criteria in section 6-6-8 are met, specific plan recommendations are also met.

C. Existing development and viewpoints of property owners in the surrounding area:

The owners of the properties identified by Assessor map 21E46E11 tax lot 1500 (Sheets), 1600 (Martin), and 900 (Wagster) objected to the application. The overall testimony was consistent. The proposed use of a non-farm dwelling will interfere with nearby farming operations and the subject property is clearly suitable for farm use. The owner of the property identified as tax lot 1400 (Weyerman) did not object to the application.

D. Availability of services and utilities.

Letters from the Nyssa Road Assessment District #2, Owyhee Irrigation District, and the Adrian Rural Fire Protection District were submitted with the application. There were no objections from these agencies.

E. The effect of the proposed use on the stability of the community's social and economic characteristics.

a. Economic characteristics.

According to testimony from Dennis Martin, this 5 acre parcel has been part of the 36.93 acres tax lot 1300 since the irrigation project was established approximately 80 years ago. The property has been bought and sold as farm land several times. Productive farm ground would be removed from production by granting this application.

b. Social Characteristics.

Based on the testimony of Dennis Martin and Chantel Sheets, the proposed non-farm dwelling undesirably affects the social characteristics/norms (for example, scale of farming, resource management, irrigation and water rights) of the farm community/neighborhood.

F. It does not interfere with traditional fish and wildlife use of habitats determined critical or sensitive in the Fish and Wildlife Habitat Protection Plan for Malheur County.

The subject property is not located within a designated fish or wildlife habitat.

G. General Criteria:

1. Increasing setbacks of structures to reduce possibilities of overshadowing adjoining property, noise, odor or night lighting nuisances.

Based upon these adopted findings of fact, this application is denied and therefore this criterion is not applicable.

2. Landscaping improvement for the visual benefits of the subject site and for the improved appearance of the neighborhood and County.

Based upon these adopted findings of fact, this application is denied and therefore this criterion is not applicable.

3. Location and size of driveway access points and right-of-way widening and improvement for present and future traffic circulation and safety.

Based upon these adopted findings of fact, this application is denied and therefore this criterion is not applicable.

4. Visual screening of outdoor waste and storage areas.

Based upon these adopted findings of fact, this application is denied and therefore this criterion is not applicable.

5. Control and focusing of outdoor lighting to avoid glare being directed beyond property limits.

Based upon these adopted findings of fact, this application is denied and therefore this criterion is not applicable.

**FINDINGS OF FACT ADDRESSING SPECIFIC CRITERIA TO EVALUATE
SUITABILITY OF PROPOSED CONDITIONAL USE**

**Malheur County Code 6-6-8-1: NONRESOURCE DWELLINGS IN EFU, ERU, OR EFFU
ZONES:**

A. The use:

1. Is compatible with farm uses and is consistent with ORS 215.243; and

The proposed non-farm dwelling is not compatible with farm uses and conflicts with Oregon's agricultural land use policy. The subject parcel was created with the intent to sell it to a third party for a non-farm dwelling. The landowners established the current location of the property through property line adjustments and transferred water rights from it as opposed to keeping the property economically viable and in farm production.

2. Does not interfere seriously with accepted farming practices on adjacent lands; and

The proposed non-farm dwelling will interfere with accepted farming practices on adjacent farm land. Normal farm practices on adjacent lands include irrigation, baling hay, spraying, dust, and equipment noise. The property to the east (11 acres) has never been farmed, but is the site of an allowed use replacement dwelling in the EFU zone.

3. The proposed dwelling will materially alter the stability of the overall land use pattern of the area – OAR 660-033-130 (4)(a)(D)- study map area; and

The land use pattern of the area is farming, farm dwellings and other allowed uses in the exclusive farm zone. In the last 38 years, only four (4) allowed replacement dwellings have been built in the area. Two (2) dwelling were demolished. No new non-farm dwellings, non-farm uses or conditional uses have been approved in the area. In light of this history, a non-farm dwelling will materially alter the stability of the overall land use pattern of the area.

4. Is situated on generally unsuitable land for the production of farm crops or livestock considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of tract.

The subject property is suitable for farming. The property is class III/IV soils and has established water rights. Voluntarily abandoning the water rights off the property does not make the property unsuitable for farming. The property has historically been farmed. In the last 48 years, Mr. Martin testified that a crop has been taken off the parcel every year. The landowners testified they currently take hay off the property, and provided the following comment in their application, “This property is not unsuitable for all farm uses. It would be a good spot for a small pasture for a couple of cows. With the house taking up just a small piece of it.”

OREGON REVISED STATUTE (ORS) 215.284/ MALHEUR COUNTY CODE 6-6-7 (H)

2. In counties not described in subsection (1) of this section, a single-family residential dwelling not provided in conjunction with farm use may be established, subject to approval of the governing body or its designee, in any area zoned for exclusive farm use upon a finding that:

a. The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

The proposed non-farm dwelling will interfere with and force a significant change and increase the cost of farming practices on adjacent farm land. In particular, the drainage of waste water and irrigation that has existed for approximately 80 years under Owyhee Irrigation project in the area.

- b. The dwelling is situated upon a lot or parcel or portion of a lot or parcel that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of tract. A lot or parcel or portion of a lot or parcel may not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land;**

The subject property is suitable for the production of crops. Specifically, the 4.75 acre parcel recently had 3.3 acres of Owyhee Irrigation water rights. This 4.75 acre parcel has been part of the 36.93 acres tax lot 1300 since the irrigation project was established approximately 80 years ago. The property has been bought and sold as farm land several times. The soils are a Class III/IV soil and are considered farm soils in Eastern Oregon. The subject property is farmable and can reasonably be put to farm use in conjunction with other surrounding land.

- c. The dwelling will be sited on a lot or parcel created before January 1, 1993;**

A property line adjustment established the current location/boundaries of the property, which was administratively approved on August 17, 2018. The property does not qualify for a non-farm dwelling under ORS 215.284. The property is not a lot or parcel as defined in ORS 215.010 or ORS 92.010 created before January 1, 1993.

Applicant's reference to ORS 215.284 (7) as authority in this matter is misplaced and does not apply. ORS 215.284(7) applies to partitions to site non-farm dwellings (not property line adjustments to site non-farm dwellings) in the exclusive farm use zone.

- d. The dwelling will not materially alter the stability of the overall land use pattern of the area; and**

The development of a non-farm dwelling on the subject property will alter the stability of the overall land use pattern in the area. Specifically, the land surrounding the subject property is primarily farming. The land use pattern of the area is farming, farm dwellings and other allowed uses in the exclusive farm zone. In the last 38 years, only four (4) allowed replacement dwellings have been built in the area. Two (2) dwelling were demolished. No new non-farm dwellings, non-farm uses or conditional uses have been approved in the area. In light of this history, a non-farm dwelling will materially alter the stability of the overall land use pattern of the area

- e. The dwelling complies with such other conditions as the governing body or its designee considers necessary.**

This criterion is not applicable.

CONCLUSIONS

Based upon the foregoing findings of fact, the Malheur County Planning Commission makes the following conclusion and decision:

Substantial evidence exist in the record to support the conclusion that the application does not meet the general and specific criteria established in the Malheur County Code and Oregon Revised Statutes for a non-farm dwelling in the exclusive farm use zone. This application for a conditional use permit is denied.

Kathy Clarich
Planning Commission Chairman
Kathy Clarich

1-24-2019
Date