

## STAFF REPORT

Planning Department File No. 2019-09-012

### CONDITIONAL USE APPLICATION FOR 2 NON-FARM DWELLINGS AND 2 NON-FARM PARTITIONS

Planning Commission Meeting Date: November 19, 2019

1. **APPLICANT:** Roderick and Dixie Moeller  
Steven Moeller  
2011 NW 4<sup>th</sup> Ave  
Ontario, OR 97914
2. **PROPOSED ACTION:** Conditional Use approval for two non-farm partitions.
3. **PROPERTY IDENTIFICATION:** Tax Lot 700, T18S, R47E, Sec.32; Assessors Map 18S47E32; Malheur County Reference #9361.
4. **PROPERTY LOCATION AND DIRECTIONS:** North-west of the intersection of Alameda Dr and King Ave, in Ontario, OR.
5. **ZONING:** Exclusive Farm Use (C-A1).
6. **PARCEL SIZE:** The parcel is 116.62 acres.
7. **PARCEL USE:** Irrigated farm land, primarily flat terrain with a dwelling and a non-farmed 2 acres on the southern-east corner.
8. **SURROUNDING USE:** All adjoining properties are in Exclusive Farm Use (C-A1).
9. **ACCESS:** King Ave and Alameda Drive.
10. **SANITATION REQUIREMENTS:** A DEQ approved sanitation system would be required for the proposed 2 acre non-developed partition. The existing home site has a working septic system.
11. **FIRE PROTECTION:** The entire parent parcel is within the Nyssa Rural Fire District. (Letter Attached).
12. **NATURAL HAZARDS:** None.
13. **WATER RIGHTS:** The parent parcel is irrigated by Owyhee Ditch Irrigation, with the exception of the home site and the proposed 2 acre partition (it never had water rights).

**14. SOIL TYPE:** There is a small portion, on the south-west side of the parent parcel, with class I soils; the rest of the parcel, is all class II soils if irrigated; the proposed 2 acres parcel is non-irrigated class IV soils.

**15. ZONING HISTORY:** None.

#### **GENERAL CONDITIONAL USE CRITERIA**

**MCC 6-6-7 - GENERAL CRITERIA TO EVALUATE SUITABILITY:** In considering the suitability of proposed conditional uses, the Planning Commission shall base its decision upon the following criteria:

- A. Comprehensive Plan goals and policies, as applicable.
- B. Specific plan recommendations

**Proposed Finding: MCC 6-6-8-2 regulates the non-resource partition in the exclusive farm use zone.**

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

**Proposed Finding: Letter notice was sent to adjoining landowners and published in the Argus Observer on November 1, 2019. No comments were received.**

- D. Availability of services and utilities.

**Proposed Finding: The parcel is located within Nyssa Rural Fire District.**

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

**Proposed Finding: The proposed partitions will have no effect on the farming/ranching practices that would interfere with the stability of the community's social and economic characteristics, due to the proposed 2 acres parcel being non-irrigated and non-farmable. The other proposed partition is already an established home site, with approximately 2.6 irrigated acres that will continue to be farmed.**

- 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.

**Proposed Finding: The proposed dwelling is outside the sage grouse habitat. There are no water sources on the parcel to sustain a fish habitat. Because of those findings, the proposed structure would not interfere with traditional fish and wildlife.**

## G. General Criteria

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

**Proposed Finding: The proposed 2 acres non-farm partition on the southern part of the property is directly across the street from a non-farm property with a dwelling, tax lot 1000. There are no other dwellings in the immediate vicinity of the proposed partitions.**

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

**Proposed Finding: The potential development of the 2 acre partition would benefit the appearance of the neighborhood and County.**

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

**Proposed Finding: As instructed by Nyssa Road Supervisor, both the proposed partitions have adequate visibility from both directions on Alameda Dr and King Ave and are deemed as a safe approach. No additional access is needed.**

4. Visual screening of outdoor waste and storage areas.

**Proposed Finding: The proposed partition is to potentially be developed for a dwelling. Outdoor waste storage will be minimal.**

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

**Proposed Finding: Control of outdoor lighting will not be necessary.**

6. Special criteria listed below, as applicable:

## H. Allowance of Certain Uses: A use allowed under Section 6-3A-3 of this Title shall be approved only where it is found that the use will not:

1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
2. Significantly increase cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. (Ord. 86, 12-7-1993)

**Proposed Finding: The proposed non-resource partitions will not force significant change in accepted farm or forest practices on surrounding lands devoted to farm use, nor significantly increase the cost of accepted farm practices. The parcel is surrounded by properties zoned exclusive farm use.**

#### **SPECIFIC CONDITIONAL USE CRITERIA**

#### **MCC 6-6-8-1 - NONRESOURCE DWELLINGS IN EFU, ERU OR EFFU ZONES:**

A. Conditions For Allowance: The use:

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

**Proposed Finding: Due to the location of the proposed partition with a potential non-farm dwelling, being right at the intersection of King Ave and Alameda Dr, across the street from another non-farm dwelling, the potential single family dwelling is not anticipated to contribute to a traffic increase or cause any neighboring farming practices to be interrupted or restricted. The other proposed partition, at the northern-east corner of the property, has an established dwelling and a 2 acre farmed field on it, which will continue to be irrigated and farmed. Therefore, the proposed use is compatible with farm use.**

2. Does not interfere seriously with accepted farming practices on adjacent lands; and
3. Does not materially alter the stability of the overall land use pattern of the area; and

**Added by OAR 660-033-130(4)(a)(D) - June 1, 1998:** In determining whether a proposed non-farm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new non-farm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall;

- i. Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other adjacent agricultural areas. Findings shall describe the study area, its boundaries and the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area.
- ii. Identify within the study area the broad types of farm uses (irrigated or non-irrigated crops, pasture or grazing lands), the number, location and type of existing dwellings

(farm, non-farm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of non-farm / lot-of-record dwellings that could be approved under subsections (3)(a), (3)(d) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993, and the parcels larger than the minimum lot size that may be divided to create new parcels for non-farm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this subparagraph:

iii. Determine whether approval of the proposed non-farm / lot-of-record dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study 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.

B. As a condition of approval, the owner is required to allow the following statement to be entered into the chain of title for the non-farm parcel: (the use of a straw-man may be necessary):

“The property herein described is situated in or near a resource (farm or ranch) zone, where the intent is to encourage agricultural use and minimize conflicts with non-resource uses. Non-resource residents may be subjected to common, customary and accepted farm and ranch practices that are conducted in accordance with federal and state laws but ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees, by the recording of this statement, and in return for allowing a non-resource dwelling on this property, hereby accept the potential impacts of accepted farm and ranch practices as normal and necessary and part of the risk of establishing a dwelling in this area, and grantee acknowledges the need to avoid activities that conflict with nearby resource uses.” Evidence shall be provided showing the lot or parcel upon which the dwelling is proposed to be located has been disqualified for valuation at true cash value for farm use under ORS 308.113.

#### **MCC 6-6-8-2: NONRESOURCE PARTITION IN AN EFU, ERU OR EFFU ZONE:**

A. Nonfarm Use: The creation of all new parcels intended for nonfarm use shall meet the following requirements:

1. Is the proposed use compatible with agriculture uses and is it consistent with ORS 215.243. How? Address each issue;

**Proposed Finding: The proposed 2 acres partition has no water rights and it has all class IV soils when non-irrigated. The current home site partition will continue to be farmed as it has 2 farmable acres with water rights.**

2. Is the proposed use located where it may interfere seriously with accepted farming practices on adjacent lands? What conditions exist to avoid this problem?

**Proposed Finding: The proposed 2 acres non-farm partition on the southern part of the property is directly across the street from a non-farm property with a dwelling, tax lot 1000. There are surrounding farms with rotation crops that the proposed partitions will have no effect on.**

3. Will the proposed use materially alter the stability of the overall land use pattern of the area?

**Proposed Finding: The entire parent parcel is primarily flat.**

4. Is the proposed use situated on generally unsuitable land for the production of agricultural crops or livestock considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of tract? If so, the following factors must be met:
  - a. If located on range or agricultural lands, are the proposed nonresource parcels only as large as necessary to accommodate the use and provide any buffer area needed to ensure compatibility with adjacent agricultural uses? The intent is that Class I through IV soils be included within nonagricultural parcels only when the limited extent or physical configuration of such soils make it impractical to keep them consolidated in an agricultural parcel.
  - b. Are the proposed parcels located on land with predominantly low productivity V through VII soils not suited for agricultural use and are large enough to accommodate the use and provide any buffer area needed to ensure compatibility with adjacent agricultural uses?

**Proposed Finding: The proposed partition on the SE corner is on class IV land, determined as average. The home site partition, is on class II land, considered prime farmland, and will continue to be farmed and irrigated.**

5. A new nonfarm parcel shall not be approved for a use that will have a significant adverse impact on the quality of farm or range land, watersheds, fish and wildlife habitat, soil and slope stability, air and water quality, or outdoor recreation areas. In what ways do the proposed parcels avoid conflict with these items?

**Proposed Finding: The proposed partition on the SE corner is on class IV land, determined as average. It never was irrigated and it does not have water rights. The home-site partition, is on class II land, considered prime farmland, and will continue to be farmed and irrigated.**

6. Is an existing dwelling used as a residential home for up to six (6) persons who fit within the definition of persons listed in ORS 443.400(5) through (10)?

**Proposed Finding: The proposed partition is potentially for a single family residence that fits the criteria listed in ORS 443.400(5) through (10). Although, there is no proposal by the applicant for immediate development.**

7. Is an alternative dwelling used so that a historical dwelling may be preserved without occupation as provided by ORS 215.263(8)(b).

**Proposed Finding: There are no historical dwellings that are located on the parent parcel.**

#### **PROPOSED CONDITIONS OF APPROVAL**

1. The following statement must be entered into the chain of title for the new non-farm dwelling parcel: (Parent parcel is tax lot #3400, Section 26, T22S, R46E, Assessor's map 22S46E. Malheur County Reference #10942)  
  
"The property herein described is situated in or near a resource (farm or ranch) zone, where the intent is to encourage agricultural use and minimize conflicts with non-resource uses. Non-resource residents may be subjected to common, customary and accepted farm and ranch practices that are conducted in accordance with federal and state laws but ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees, by the recording of this statement, and in return for allowing a non-resource dwelling on this property, hereby accept the potential impacts of accepted farm and ranch practices as normal and necessary and part of the risk of establishing a dwelling in this area, and grantee acknowledges the need to avoid activities that conflict with nearby resource uses."  
  
2. Evidence shall be provided showing the parcel upon which the dwelling is proposed to be located has been disqualified for valuation at true cash value for farm use and the back taxes have been paid for the previous ten (10) years.  
  
3. Adequate firebreaks shall be constructed and maintained to minimize danger from potential wildfire.  
  
4. This approval is valid for four years from the date of this order. Substantial action must be taken within this time period or the approval will lapse.

## **EXHIBITS**

1. Letter from Nyssa Road Assessment District#2
2. Letter from Old Owyhee Ditch Improvement District
3. Letter from Nyssa Fire Department