

Before the Planning Commission

Planning Department File No. 2020-09-012

**CONDITIONAL USE APPLICATION
FOR
TWO NON-FARM DWELLINGS AND TWO NON-FARM PARTITIONS**

Planning Commission Meeting Date: October 22, 2020 & November 19, 2020

1. **APPLICANT:** Sherwin Koehn
450 Douglas Rd
Ontario OR 97914
2. **PROPOSED ACTION:** Conditional Use approval for two non-farm dwellings and two non-farm partitions.
3. **PROPERTY IDENTIFICATION:** Tax Lot 900, T17S, R47E, Sec. 5; Assessors Map 17S47E05; Malheur County Reference #6539.
4. **PROPERTY LOCATION AND DIRECTIONS:** The property is located directly north-east from the intersection of Power Rd and Douglas Rd, about 8 miles north of Ontario, OR.
5. **ZONING:** Exclusive Farm Use (C-A1) and Exclusive Range Use (C-A2).
6. **PARCEL SIZE:** The parcel is 77.38 acres.
7. **PARCEL USE:** Part of the property is currently being farmed with 13.7 acres of water rights planned to be transferred on to the site of the proposed non-farm partitions.
8. **SURROUNDING USE:** The parcel is surrounded entirely by properties currently being farmed. The property directly to the east, is owned by the subject applicant, as well.
9. **ACCESS:** Current access to the property is via Douglas Rd. Both the proposed partitions have independent access points off Power Rd (Letter Attached).
10. **SANITATION REQUIREMENTS:** A DEQ approved sanitation system would be required for each proposed non-farm dwelling.
11. **FIRE PROTECTION:** The entire parent parcel is within the Payette Rural Fire Protection District. (Letter attached).
12. **NATURAL HAZARDS:** None.

- 13. WATER RIGHTS:** The property owner has submitted a request to transfer 13.7 acres of water rights, north of the Owyhee Canal, which is the site of both the proposed partitions. The intent is to split equally the water rights acres, between the 2 proposed non-farm partitions and maintain them.
- 14. SOIL TYPE:** There is an insignificant portion off Power Rd with class VIII soils. The rest of the subject parcel is mostly covered by class III soils, with the exception of the site of the proposed non-farm partitions. None of the soils north of the Owyhee Canal have been surveyed by the National Resources Conservation Service. Both the proposed partition sites are situated on soils incompatible with farm use, as outlined in OAR 660-033-0130 (4)(c)(B).
- 15. ZONING HISTORY:** On the subject parcel, per Malheur County Assessor's records, there is a farm dwelling, built in 1946. There is no other known zoning history.

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

Finding: MCC 6-6-8-1 regulates the conditional use process for a non-farm dwelling and MCC 6-6-8-2 regulated the conditional use process for a non-farm partition.

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

Finding: Letter notice was sent to adjoining landowners on September 29, 2020 and published in the Argus Observer on October 2, 2020.

- D. Availability of services and utilities.

Finding: The entire parent parcel is located within the Payette Rural Fire Protection District. All services and utilities are available.

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

Finding: The proposed dwellings will have no effect on the farming/ranching practices that would interfere with the stability of the community's social and economic characteristics. The proposal is to maintain all the water rights acres. All the existing farm ground on the proposed parent parcel will remain unchanged.

- 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.

Finding: The proposed dwellings are outside the sage grouse habitat. There is no identified critical 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.

Finding: The proposal is 2 non-farm partitions and 2 non-farm dwellings. Currently, the intent is to sell the proposed partitions and have the potential buyers develop them. At that time, due to the size of the adjacent parcels, the potential home sites will be at least 900' away from the nearest home site therefore there will be no impacts on adjoining properties.

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

Finding: The proposed dwellings 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.

Finding: Each of the non-farm partitions will have separate access points off Power Rd, without impeding the safety of traffic circulation. (Letter from Road master included).

4. Visual screening of outdoor waste and storage areas.

Finding: The proposed development is for dwellings. Outdoor waste storage will be minimal. Ontario Sanitary was contacted by applicant and confirmed that solid waste disposal will be secured for both non-farm dwellings.

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

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)

Finding: The proposed non-resource dwellings 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 parent parcel is surrounded by properties that are zoned exclusive farm and range use devoted to pastures, range and irrigated crops. The parcels that are zoned exclusive farm use are directly east, south and west, will not be impacted by the placement of the dwellings on the proposed partitions. The proposed dwellings will have private driveways, designated to only access the proposed dwellings, so there will be no impact to the Power Rd traffic.

SPECIFIC CONDITIONAL USE CRITERIA

MCC 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

Finding: The current farming will continue. All existing farm ground in this proposal will remain unchanged, with the exception of the ground on the southern proposed partition; however, the intent is to minimize that impact and maintain the same amount of water rights acres. The granting of this application will not result in loss of natural resources. Therefore, the proposed use is compatible with farm use.

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

Finding: Due to the independent access points for each of the proposed non-farm dwellings, the interference with the farming practices on the surrounding properties will be minimal. Therefore, a single-family dwelling on these partitions will not interfere with adjacent farm practices.

3. Does not materially alter the stability of the overall land use pattern of the area; and

Finding: Due to the un-surveyed soils and size and zoning history of the parcel, there is no other further development anticipated within the study area.

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;

Finding: Both the proposed partitions are to be placed on soils currently not surveyed by NRCS and are intended to be developed by future buyers, not the current applicants. The current farmed land will not be impacted and will continue to be irrigated and farmed.

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?

Finding: The location of both non-farm partitions will have minimal impact of adjacent land as they have direct access and the partitions can be outside of farm operations.

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

Finding: The sites of both partitions are currently undeveloped.

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?

Finding: The soils on both proposed partitions haven't been surveyed by the NRCS and are deemed not suitable for row crops.

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?

Finding: The natural landscaping will be used to minimize the impact and conflict with the farm. The watershed from the proposed non-farm partitions will be generally contained onsite. The proposed development will meet environmental standards for air and water quality.

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)?

Finding: Both the proposed partitions are for single-family residences that fit the criteria listed in ORS 443.400(5) through (10).

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

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

CONDITIONS OF APPROVAL

1. The following statement must be entered into the chain of title for the new non-farm dwelling parcels: (Parent parcel is tax lot #900, Section 5, T17S, R47E, Assessor's map 17S47E05. Malheur County Reference #6539)

"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 parcels upon which the dwellings are proposed to be located have 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. Evidence shall be provided that a maximum of 4 acres of water rights has been transferred, per non-farm partition site and each partition site will have a separate water measuring device.
4. Adequate access shall be secured for each individual partition and the access road shall be constructed in compliance with Oregon Fire Code.
5. Adequate firebreaks shall be constructed and maintained to minimize danger from potential wildfire.
6. 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 Payette Rural Fire District
2. Letter from County Roadmaster
3. Water rights map for the parent parcel and the partitions site.
4. Email from Owyhee Irrigation District

CONCLUSION

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

Substantial evidence exists in the record to support the conclusion that the application meets the general and specific criteria established in the Malheur County Code and Oregon Revised Statutes for a non-farm dwelling and non-farm partition in an exclusive farm use zone.

ORDER

This application for a conditional use permit is approved.

APPEALS

The appellate body for appeals from the final decision of the Planning Commission is the County Court. To file an appeal an appellant must file a completed notice of appeal on a form prescribed by the Planning Department with a \$200.00 appeal fee with the Planning Department not later than 5:00pm on the tenth day following the mailing of written notice of the decision. Notice of appeals may not be received by fax or email. The notice must include a statement raising any issue relied upon for the appeal with sufficient specificity to afford the County Court an adequate opportunity to respond to and resolve each issue. All appeals from the Planning Commission's final decision shall be based on the record of the hearing made before the Commission. Therefore, no additional information or testimony not included in the record of the hearing before the Planning Commission may be brought before the appellate body. The appellant must pay for the transcription of the hearing appealed from and submit the transcript to the Planning Department within ten (10) days after the date of notice of appeal is filed or ten days after the hearing tape is mailed or given to the appellant, whichever is later.

Planning Commission Chair
Kathy Clarich

Date