

Malheur County Planning Commission

The Malheur County Planning Commission Meeting was held remotely, via GoToMeeting, on October 22, 2020. Kathy Clarich called the meeting to order at 7:34 p.m.

MALHEUR COUNTY COMMISSION MEMBERS PRESENT:

Kathy Clarich
Clark Forsyth
Rob Kindschy
Linda Simmons
John Faw
Chad Gerulf
Ed Anthony

MALHEUR COUNTY PLANNING DEPARTMENT STAFF MEMBERS:

Eric Evans, Planning Director
Tatiana Burgess, Planning Management Assistant
Stephanie Williams, County Counsel

ONTARIO PLANNING COMMISSION MEMBERS PRESENT

Ralph Pool
Max Twombly
John Hall
Cydney Cook
Blu Fortner
John Briedenbach

NEW BUSINESS

Applicant: Gordon and Linda Curtis

Representative:

Conditional Use Permit for one Non-Farm Dwelling. Planning Department File No. 2020-07-013.

Eric Evans - I will be acting kind of as a moderator, I did this similar thing last time but it's a little bit different because we were in person at the time. I'm going to read a few things... Do we have... I know somebody was going to be representing the Curtis's. Do we have somebody representing the Curtis's? I'll ask the Chairs, do you want me to proceed without them? Do you think there is going to be questions?

Kathy Clarich - I don't have a problem.

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Ralph Poole - I think we should move forward.

Eric Evans – Now is the time to hear the request the application to amend the Ontario Urban Growth Area Boundary, UGA and UGB Zone change from Ontario ORS/UGA to Ontario OI1/UGA to include property commonly identified as Map 18S47E05AA Tax Lot 300 and 301. Additionally the Malheur County Planning Commission will be (INAUDIBLE)... We'll be listening for the Malheur County Planning Commission for approval of a property line adjustment between the above referenced parcels. These are Malheur County Planning Department file 2020-09-003 and the City of Ontario Planning Action number 2020-08-32AZ. We don't have a podium but you will be a time to speak and if you do please state your name, address and title for the record.

1. There is a general time limit for testimony of 5 minutes. The applicant's initial presentation will be 20 minutes; with a rebuttal of 10 minutes.
2. All testimony and questions shall be directed to or through the myself, the moderator. Testimony in question should not be directed to staff or directly to witnesses.
3. Do any members of the Ontario Planning Commission or Malheur County Planning Commission need to abstain?
 - a. None.
4. Do any members of the Ontario Planning Commission or Malheur County Planning Commission have any conflicts to disclose?
 - a. None..
5. Do any members of the Ontario Planning Commission or Malheur County Planning Commission have any bias to disclose?
 - a. None.
6. Do any members of the Ontario Planning Commission or Malheur County Planning Commission have any ex parte communication, including any site visits, to disclose?
 - a. None.
7. Does anyone object to any members of the Ontario Planning Commission or Malheur County Planning Commission hearing this application?
 - a. There are no objections.
8. Does anyone challenge the Ontario Planning Commission or Malheur County Planning Commission jurisdiction to hear these matters?
 - a. There are no challenges.

Land Use Statement for the record: Oregon Land Use law requires several items be read into the record at the beginning of this hearing. I will now read these items.

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 6-10-7: the Joint Management Agreement between Ontario and Malheur County, Ontario Municipal Code 10B-20-30, and Statewide Planning Goals 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14.

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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 Ontario 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 and evidence sufficient to afford the decision makers and the parties an adequate opportunity to respond to each issue. The failure to raise an issue may preclude raising it before 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.

Preliminary Staff Report: Read by Malheur County Planning Department Director, Eric Evans.

Eric Evans - This is the Malheur County Planning Action number 2020-09-003 and the City of Ontario Planning Action number 2020-08-32AZ to amend the Urban Growth Boundary and zone change from Ontario Residential to O-I1 to include a portion of the property identified with Map 18S47E05AA Tax Lots 301 and 300. Additionally, Malheur County Planning Commission is here to approve a proposed property line adjustment between the above referenced parcels where prior to the property line adjustment Tax Lot 300 will consist of 98,901 square feet and Tax Lot 301 will consist of 42,456 square feet. Upon completion of the property line adjustment Tax Lot 300 will consist of 126,450 square feet and Tax Lot 301 will consist of 14,908 square feet.

This is sort of like that Sheri Hart Rief application where the applicant was having issues with their sewer and needed to connect to city services. This applicant came to the City and wanted to connect in but if you guys can see this (Mr. Evans referring to a map) you can see where the house is in kind of the southern part of that Tax Lot 301. It doesn't really match very well with the Industrial Use and their office is towards that more northern part. What they want to do is adjust the Residential Use. You can see where it has the Ontario UGA Residential and the I1, they want to adjust those to match the actual use and get the offices off of Tax Lot 301 and move the offices to 300 where the use is.

I believe both planning commissions have a staff report in front of them. One thing to note, we do address many of the findings of fact in the staff report. A notice to the Department of Land Conservation and Development was sent on September 17, meeting that 35 day notice. A notice to all property owners within 100' from the subject property was mailed on October 1st. And a notice was published in the Ontario Argus Observer on or before October 2, 2020. We will be having this... the Planning Commissions will be voting to recommend an action from their respective governing bodies. Also in the staff report are some suggested motions for approval or denial.

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Is there anybody on now that is representing the applicant or is the applicant on?

Dan Cummings - I don't believe so. If anybody has any questions, I can answer them, probably for the owners.

No Proponent Testimony.

No Opponent Testimony.

No Public Agency Testimony.

Eric Evans - Lastly, I think this is pretty cut and dry. All that we're doing is we're, both Planning Commissions, are looking about changing the zoning of 301 and adjusting that zoning to match what the new property lines are going to be and Malheur County Planning Commission will do that property line adjustment. It's pretty cut and dry. As staff, I would recommend approval of this.

Ralph Poole - Do we happen to have an overlay that shows the final, after the lot line adjustments?

Eric Evans - Let me see what I have really quickly. I know there was one.

Kathy Clarich - Wouldn't it be Exhibit 'B' in the packet?

Eric Evans - Yes. That's what I was going to do is look for that Exhibit. I tried to keep the same Exhibits as Dan had marked too. If you actually look at Exhibit...

Ralph Poole - I don't have an Exhibit 'B'.

Eric Evans - Let me pull it up really quick.

Dan Cummings - If I might add for my Commission, right after this, if this is approved we will be doing another action that will be annexing the house parcel into the City and rezoning it to City ORS 50.

Kathy Clarich - I have a question. It said in there that they were granted an exception. What was the exception?

Eric Evans - It's already an exception property. It's just a technical term for land use, right? So are granted an exception from the Statewide Planning rule so... So a lot times these UGB lands used to be EFU and they're excepted from those Goal 3 rules so it's a goal 3 exception. That's probably what you're referring to. That's what we did like with the Treasure Valley Reload Center, we basically gave that land an exception to Goal 3 and maybe Goal 14. Ralph, can you see that? Does that help?

Ralph Poole - Yes, thanks.

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Kathy Clarich - So they'll still use the same driveway into the house right?

Dan Cummings - Yes. Yeah, basically the house parcel by use is not changing. The fence is right where the new line is shown and everything. The house parcel use is going to be the same it just happens that it had a bigger piece that's being used by the commercial operation.

Eric Evans - So at this point in time, if we'd like, both Commissions can close their hearings for public testimony and we can have some deliberation, if you'd like.

Ralph Poole - I'd accept a motion from the Ontario Planning Commission to close public hearing.

John Briedenbach made a motion to close the public hearing. John Hall seconded the motion which was approved unanimously by the Ontario Planning Commissioners present.

Kathy Clarich - Do I have a motion to close the public hearing?

Ed Anthony made a motion to close the public hearing. John Faw seconded the motion which was approved unanimously by the Malheur County Planning Commission members present.

Closed to Public Testimony.

Eric Evans - Okay. We'll go ahead and if anybody has any questions or any kind of deliberation. We'll entertain some questions. If nobody has any questions I'll just move on.

John Faw - If this is as straight forward as it looks I don't have any questions.

Eric Evans - In my opinion it's pretty darn straight forward.

Kathy Clarich - The only question I had was the entrance that goes with the house and a separate entrance for the storage.

Dan Cummings - Yes to both of those.

Ralph Poole - Any further questions from the City of Ontario Commission? I don't hear any so I think we're happy with findings of fact.

Eric Evans - Okay, at this point in time I would entertain any motions from... Dan, remind me who do we want to go first? Or maybe this is a Stephanie question.

Dan Cummings - The County should go first because they're the first ones to approve this and then we counter right behind.

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Ed Anthony made a motion to accept the staff report and findings of fact. John Faw seconded the motion which was unanimously approved by the Malheur County Planning Commission members present.

Ralph Poole - For the City of Ontario Planning Commission I would accept a motion to accept the findings of fact and staff report.

Blu Fortner made a motion to accept the findings of facts and staff report. Cydney Cook seconded the motion which was unanimously approved by the City of Ontario Planning Commission members present.

Kathy Clarich - I need a motion for the zone change.

Ed Anthony made a motion to move the request of the zone change Ontario O-RS/UGB to Ontario O-II/UGB to include a portion of the property commonly identified as Map 18S47E05AA to the County Court to approve this motion. John Faw seconded the motion which was unanimously approved by the Malheur County Planning Commission members present.

Ralph Poole - For the City of Ontario Planning Commission I would accept a motion to either accept or deny the request for a zone change.

John Briedenbach made a motion for approval of the zone change O-RS/UGB to Ontario O-II/UGB to include a portion of the property commonly identified as Map 18S47E05AA TL 301 and 300 hereby amending the Ontario Urban Growth Area/Boundary (UGA/UGB), as set forth in the County Planning Action 2020-09-003 and City Planning Action 2020-08-32AZ based on the information, findings and conclusions set for in the staff report. John Hall seconded the motion that was unanimously approved by the City of Ontario Planning Commission members present.

Eric Evans - I think for Ontario City Planning Commission, on behalf of the County I would like to thank you guys. This isn't as great as seeing us all in person. It has a little bit of technical challenges but I do appreciate your guys' willingness to do this and we'll push this motion forward. Dan is there anything else that you want to say?

Dan Cummings - I want to just thank the Malheur County Planning Commission and the City of Ontario Planning Commission for their time this evening and approving this action. Thank you.

Eric Evans - So at this point in time if Ontario you are welcome to stay or adjourn and do whatever you'd like to do.

Ralph Poole - As Ontario Planning Commission Chairman I would accept a motion to adjourn.

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Blue Fortner made a motion to Adjourn. Cydney Cook seconded the motion which was approved unanimously by City of Ontario Planning Commission members present.

OLD BUSINESS

Approval of August 2020 minutes:

Ed Anthony made a motion to accept the August 2020 minutes. Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present.

CONTINUED BUSINESS:

Applicant: Jennifer Ellsworth
5452 N. Hickory Burr Place
Boise, Idaho 83713

Kathy Clarich - So did we change where the houses are going to go? Or where the land is going to be divided on this?

Eric Evans - Tatiana, do you want to talk about this or am I?

Tatiana Burgess - Yes, I can do that. They had the opportunity to update the proposal. We have been presented with a new proposed non-farm partition map to where each of the partitions is going to go north and south of Snively Gulch Road to where they have direct access off of the County Road. They did present the argument that there had been a secured easement for the former northern partition however they abandoned that idea. So right now they are only proposing the new map that has been presented in your packet.

Yesterday we did receive a commentary letter from our County Road Master and (Eric if you could share that on the screen) according to the County Road Master he is now okay with Ellsworth's having access for the two proposed partitions as long as they commit to having the Snively Gulch Road back to the original placement. It seems like the County road had, overtime, moved further south from the original pathway that it went on due to erosion and other factors. So the proposal from the County Road Master (and we definitely recommend that that's included in the conditions) is that if they commit to putting the road back to it's original placement and securing the maintenance agreement, in that case they can freely access that. If they would like to go ahead with how the road is today, how its moved from the county right-of-way, then in that case they would need to propose to secure an easement from Mr. George Martin, the neighbor in the property to the east. Eric if you want to scroll to the second page that map is actually there, what I'm actually talking about, so the Commissioners can see. Outlined in red is the original right of way and that's not how it's traveled on (is our understanding). Everybody has been kind of going south. So according to the County Road Master in that proposal is that if they go to the northern original

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path then they would be okay. Again, both partitions would have direct access off of Snively Gulch Road that way. I think that's the only update that we have so far.

Kathy Clarich - If they have to move the road then are they going to have to do all that road work themselves or is that something the County is going to help with?

Tatiana Burgess - No, this is not a county maintained road. They do have to commit to having a maintenance agreement. Again, that is outlined in Dave's letter, Dave Tiffany's letter, and it would have to be stipulated as a condition of approval that they will have that maintenance agreement for the road as, again, it is not a county maintained road.

John Faw - Maintenance agreement by whom? Between whom?

Tatiana Burgess - The applicants would have to maintain that road. We would have to secure their commitment that they are going to maintain that road.

Kathy Clarich - Do you have what size these lots are now?

Tatiana Burgess - They're each going to be two acres, the minimum allotted size. The proposal staying (INAUDIBLE) as the original one to where they do have immediate plans of developing only the northern one, the one directly north of Snively Gulch Road where they are going to build their home. The other one they just wanted to have it secured as a potential nonfarm dwelling site. They don't have immediate plans for developing that and I'm sure that's going to be addressed with the applicants themselves as well.

Eric Evans - Kathy, if you want, if Tatiana did, if the planning commission wishes I can go ahead and read this letter onto the record if you guys would like.

Kathy Clarich - That would probably be good.

Eric Evans - It's dated October 21, addressed to the Malheur County Planning Commission through Eric Evans, Malheur County Planner, regarding application for access road onto County road Tax Lot number 800 T21S Range 46ES22.

"Dear Eric Evans and Commissioners: The road involved, Snively Gulch Road, is a dirt road that is not maintained. The applicants, Vaughn and Jennifer Ellsworth, have applied for an access that will be used to connect to the County road. I wrote them a letter July 25, 2019, stating the County has no objections to their request. Since that time there has been some questions as to where the county right of way is located. Because the road has moved over the years due to erosion and other water related issues and the fact that it is not maintained. If the Ellsworths are willing to put the road back in its original location they could use the county right of way to access their property. The road, over time, has moved onto the property of George Martin. If they wish to leave the road where it is then they will need to obtain an easement from Mr. Martin to go through his private property to access their property."

Kathy Clarich - Thank you.

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Eric Evans - So it would be our recommendation that we, as staff, a condition be added to address Snively Gulch Road or the easement from George Martin as a condition of approval.

Ed Anthony - So which do they want to do? Do they want to move the road back to where it was at?

Jennifer Ellsworth - We are fine to put it back to the original road.

Ed Anthony - Okay, thank you.

Kathy Clarich - Is there anything else you'd like to tell us?

Vaughn Ellsworth - Having talked with George Martin, I think we just want to have it as the condition that we're going to get this resolved. We just got this letter yesterday. We wanted to talk with George a little bit more and just work with him. But the condition that we'd like is that we're going to put in the road but we just want to make sure everybody is on board with it either way. That's where we are at with that.

Kathy Clarich - Okay, thank you. We're still open for public comment, is that right Eric?

Eric Evans - Yeah and I mean we can give the applicant, if they want, some time to talk about their application then they have that right. If you guys want to say anything more, about moving the road or anything now is the time.

Vaughn Ellsworth - So we did move the proposed lots a little bit. We had proposed builder looking at the land and the property with us and after he pointed out some elements of what we might want to look at we decided to change those to where they are at. Also, this was, with respect to some of the opinions of our neighbors. That's all we have really as far as that.

Jennifer Ellsworth - The purpose to continue it was just to verify that we have access and I think that's been established at this point. We have access through Snively Gulch Road. We do actually have an easement on Emerald Slope Road that we won't be using at this time but that was the main thing that we understood that we needed to continue to tonight.

Kathy Clarich - Okay, thank you. Since it's open to public comment is there anybody that is for this action?

Proponent Testimony

George Martin, 2079 Highway 201, Adrian, Oregon 97901 or PO Box 228, Adrian, Oregon 97901.

George Martin - This is George Martin, owner of the Sandlot LLC to the east. I have discussed and met with Dave from the County and the Ellsworths. I believe, without a doubt, that we can resolve the issue of giving them access or allowing them access across that parcel with one or two

of the options that the County had specified there in the letter. From that stand point I have no objections to it moving forward based on those conditions. We'll get it resolved and they can move forward.

Kathy Clarich - Is there anyone else that is in favor of this action?

Tim Barton, 916 Emerald Slope Road, Adrian, Oregon 97901.

Tim Barton - Again, I just wanted to thank Ellsworths for a couple of things. Really clarifying the easement through Emerald Slope Road and listening or taking into consideration the neighbors input on the positioning of the lots there so again, just thank them for the work and effort they've put over the last month.

Kathy Clarich - Okay. Is there anybody else in favor? Okay. Is there anybody opposed?

No Opponent Testimony

Kathy Clarich - Tatiana do we have any letters or anything that haven't been entered in.

Tatiana Burgess - No, that was the only thing that we recieved yesterday from Dave Tiffany. As (INAUDIBLE) site visit terribly late, he didn't get out there until this past Monday but that is the only thing that hasn't been entered into the record so far.

Kathy Clarich - Does anybody have any questions for the Ellsworth? If not, I'm going to close it to the public.

Closed to Public Testimony

Kathy Clarich - Okay, what do you guys think?

Ed Anthony - I think we should go ahead and go with it since they got everything straightened out.

Kathy Clarich - I think we should go with it with those conditions.

Eric Evans - I was just telling Ed this but I would like you guys to be specific what you're approving. If you're wanting to approve that new map, their amended application you could call it, then to make sure that that's stated on the record.

Kathy Clarich - Is that an Exhibit number or how do we know to notate it?

Tatiana Burgess - We didn't address it as an Exhibit we just addressed it, I would say as an amended proposed plot plan, we can refer to it that way.

John Faw - That's just secures that it will show on plot maps for future reference?

Eric Evans - We can go ahead and call that Exhibit '5' as well, is what I would call that.

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John Faw - Because I want to make sure that this thing gets in the record so that it doesn't disappear and we have to go through all this again.

Eric Evans - What was that John? What were you asking for? I apologize.

John Faw - I just want to make sure that this is entered into the record so this is a permanent addition/change out there where these parcels have been created so that we don't have to go through all of this again one day.

Eric Evans - They have to have a partition plat so I think they have a surveyor to do that, to submit a partition plat. So that has to be done.

Kathy Clarich - And an easement is going to be granted up at Snively Gulch Road where it gets to their property, I assume, to the other parcel?

Eric Evans - I think the way they have it is that there won't need to be an easement because Snively Gulch Road is a public access road and they'll have direct access from that to each parcel. Am I correct?

Jennifer Ellsworth - Yes. Snively Gulch Road actually cuts across our property and that's what where we would enter.

Kathy Clarich - Okay. Let's make sure that we get the easement to that other piece from the Road District even though it's not a maintained county road, that you make sure that the easement is there for that parcel.

Vaughn Ellsworth - Why do we need an easement when it's a county road?

Kathy Clarich - Well not an easement but access granted for both parcels.

Vaughn Ellsworth - It should be, the way I see the maps, for the Snively Gulch Road so that should take care of that problem.

Kathy Clarich - Yes, but if they want to I would recommend that they get it in writing. So I will entertain a motion

Ed Anthony made a motion to accept the staff report and findings of fact. Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present with the exception of John Faw, who abstained from the vote.

Ed Anthony made a motion to approve two nonfarm dwellings. Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present with the exception of John Faw, who abstained from the vote.

Ed Anthony made a motion to approve two nonfarm partitions with the Amended Plot Plan set forth as Exhibit '5' map and with the conditions set forth in Dave Tiffany's letter regarding Snively Gulch Road. Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present with the exception of John Faw, who abstained from the vote.

New Business

Applicant: Sherwin Koehn
450 Douglas Road
Ontario, Oregon 97914

Conditional use application for two non-farm dwellings and two non-farm partitions. Planning Department file no. 2020-09-012.

Kathy Clarich – Now is the time to hear the request for a conditional use permit for two non-farm dwellings and two non-farm partitions for applicant Sherwin Koehn, Planning Department file 2020-09-012

There is a general time limit for testimony of 5 minutes. The applicant's initial presentation will be 20 minutes; with a rebuttal of 10 minutes.

1. All testimony and questions shall be directed to or through the Chair. Testimony in question should not be directed to staff or directly to witnesses.
2. Do any members of the County Planning Commission need to abstain?
 - a. None.
3. Do any members of the County Planning Commission have any conflicts to disclose?
 - a. None.
4. Do any members of the County Planning Commission have any bias to disclose?
 - a. None.
5. Do any members of the County Planning Commission have any ex parte communication, including any site visits, to disclose?
 - a. John Faw has been to the site.
6. Does anyone object to any members of the Malheur County Planning Commission hearing this application?
 - a. There are no objections.
7. Does anyone challenge the County Planning Commission's jurisdiction to hear these matters?
 - a. There are no challenges.

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Land Use Statement for the record: Oregon Land Use law requires several items be read into the record at the beginning of this hearing. I will now read these items.

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 6-6-7 General Criteria to Evaluate Suitability; 6-6-8-1 Specific Conditional Use Criteria for Non Resources Dwellings in EFU, ERU or EFFU Zones; 6-6-8-2 Specific Conditional Use Criteria for Non Resource Partition in an EFU, ERU, or EFFU Zone; 6-3A-3 Allowance of Certain Uses; OAR 660-033-130(4)(a)(D) Agricultural Lands.

Testimony, arguments and evidence presented must be directed toward these approval criteria or other criteria in State law, the Malheur County Comprehensive Plan or the Malheur County 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 and evidence sufficient to afford the decision makers and the parties an adequate opportunity to respond to each issue.

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.

We are going to start with the staff report Tatiana.

Preliminary Staff Report: Read by Malheur County Planning Department Assistant Director, Tatiana Burgess.

Tatiana Burgess – This is a conditional use application for two non farm dwellings and two non farm partitions, planning department file number 2020-09-012. The applicant is Mr. Sherwin Koehn at 450 Douglas Road in Ontario, Oregon 97914. The property is identified as Tax Lot 900 on Assessor’s Map 17S47E05; Malheur County Reference number 6539. This property is zoned Exclusive Farm Use with the exception of the proposed site of the non-farm partition site north of the canal, which is zoned Exclusive Range Use. The total size of the parent parcel is 77.38 acres. Currently the property is being used for farming as well as the surrounding use. Everything around it is being used for farming. The property directly east of the parent parcel that we can see a portion of on the map is the homesite (INAUDIBLE). The sites of each of the proposed partitions will have independent access off of Power Road. A DEQ sanitation system would be required for each of the proposed nonfarm dwellings. Each of the proposed nonfarm dwellings would be located within the Payette Rural Fire District. We have a letter attached to be included in the record. The soils on the property are primarily class III on the parent parcel with an insignificant amount of class VIII soil. None of the soils on the proposed partition site have been surveyed by the National Resources Conservation Center, which would both proposed partitions would be situated on soil

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that would be incompatible with farm use, as outlined in OAR 660-033-0130(4)(c)(B). There is only one current dwelling on the parent parcel that had been built in 1946, per the Assessor's records. There is no other known zoning history. With regards to the water rights we did get a clarification from the Owyhee Irrigation District today that we would like to introduce into the record. Currently the part north of the canal has been farmed it does not have secured water rights. The proposal is that there would be 13.7 acres transferred to the proposed site from the parent parcel and that is set to go in effect at the beginning of the next calendar year. As it stands today, none of the proposed partition sites currently have any water rights.

That is all I have.

This is the email that Eric has displayed, that we received from the Owyhee Irrigation District, that is confirming... that I can read into the records if you would like me to, Eric?

Eric Evans – Yes please.

Tatiana Burgess – The email was submitted to me today, dated October 22, at 1:43PM by Brittany Valero of the Owyhee Irrigation District and it reads, 'Hi Tatiana. The property we spoke about on the phone owned by Sherwin Koehn, located at 450 Douglas Road in Ontario, currently does not have water rights above the canal. However, he has requested a permanent water right transfer which is relocated 13 irrigated acres to that location. That will be submitted at the end of this year. We don't expect any problems to cause the transfers denial and that it will be complete by 2021. I have attached the current water rights map of the property, the red outline is the property boundary and the green colored overlay is the waters location as of 2020.'

Eric Evans – Did I fix the audio at all? Is that better.

Tatiana Burgess – We can hear you better, yes.

Kathy Clarich – Okay I guess I'm kind of confused. They're transferring a parent parcel to these lots that they want to make?

Tatiana Burgess – So according to the information that I could get from the Irrigation District, that's what they have told us, that they received a proposal from Mr. Koehn to have those 13.7 acres transferred from the parent parcel above the canal to the proposed non-farm partition sites. But I'm sure Mr. Koehn can speak more to that.

Applicant Testimony

Sherwin Koehn – That is correct. We are transferring some water from some ground that has water rights on it but are not farmable because of rocky ground and also swamp grounds along the edges of my fields.

Kathy Clarich – Can I have you state your name and your address?

Sherwin Koehn - Sherwin Koehn my address is 250 Douglas Road, Ontario, Oregon 97914.

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Kathy Clarich – So each of these lots is going to be like 7 acres or 7.5 acres?

Sherwin Koehn – Correct. They will be fairly similar lots in size, approximately 7 acres.

John Faw – There's going to be 14 acres of water rights transferred up there?

Ed Anthony – 13.7.

Sherwin Koehn – Yes, a little bit under 14.

Kathy Clarich – I guess I don't understand why you're transferring the water rights up there instead using it for farming because if you're doing two lots then it's not going to be enough water to farm with.

Sherwin Koehn – Well first of all we have a friend that wants to buy a small farm and have some cattle and he would like to purchase this lot, actually he would like to purchase both lots from us and raise some cattle and so we have ground that is really rocky and rocky hillside and also some swampy ground that for some reason has water rights on them that we don't farm ground because it's just not farmable. So we just transferred the water rights up to there to accommodate him for his little cattle operation.

Kathy Clarich – Anybody else have more questions?

Ed Anthony – So my question is, if you transfer that water right up there, if we're not supposed to take water rights to build houses on, true?

Kathy Clarich – Yes.

Ed Anthony – So all of a sudden that property he didn't have water right all of a sudden has a water right so we're going to be able to get that passed because it's got a water right?

Eric Evans – So I'll kind of sort of either clarify it a little bit or make it a little bit more murky. Technically if this were to do a nonfarm partition on a piece of property that's less than 80 acres but more than 40 acres, is what we have here. You look at the soil composition and at least 90% of it has to be class 6, 7, and 8. 90% of it has to be that and have no water rights. So we're on an undefined through NRCS so we've always kind of went that way because NRCS did not survey this property, so we meet that mark. If they had water rights today on this piece of property it would be a no and would have never made it this far. So you can take that into consideration, what does that mean if they want to transfer it later? I'm not even sure if Owyhee will allow water rights to be transferred to a property that has residential use.

Ed Anthony – So here is my question again... he would have been better off to not even let us know that he was going to transfer that water right, right?

Eric Evans – I mean, I don't want to seem like I want people to be underhanded but, yes. I guess the answer is yes.

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Ed Anthony – Then he could have done it later and we would have never known. I'm just saying, he's come out and said he's going to transfer that water right up there and what we've done over the years in anything with water rights, we haven't been able to put houses on.

Kathy Clarich – Right.

Tatiana Burgess – At the same time if it's going to go through at the beginning of the calendar year, if by that point the partition is filed and this was now turned to residential we can't get Owyhee (AUDIO BREAKING UP) water transfer. According to that letter they are okay to go through if the property looks as it is today. They are not saying that they would go through if that partition gets approved. It didn't seem like they were aware of that.

Ed Anthony – I'm just throwing out what we've been told over the years. So here's my thing, I don't have a problem okaying it as it is right now. It does not have a water right. Here's my thing... I wish he would not have told us he was transferring that water right up there, now it puts us in a hard situation here, do we okay it or do we not okay it? That's just my comment.

Kathy Clarich – There's not much ground left if he transfers that much water right, there's not that much ground left to put a house on... or two houses on.

John Faw – My quandary on this is similar to Ed's. As it sits today this is a no brainer. It's dry ground, it's above the ditch, two lots, we've got road access... perfect. But once you add the water to it that changes what they can do because then if you want to divide it off you need to go to the dry ground, which is going to be the swampy ground down below where they're going to transfer the water off of.

Kathy Clarich – I've got the same problem with it to.

John Faw – I'd love to see this go forward but I'm not sure that this something we can do. I'm like Ed, I wish we hadn't known that they were going to move water up there.

Ed Anthony – Here's my thing. Let's go at it like this then, let's say there's no water water, we know there's no water right, okay? If we okay it maybe we put in there if they add water right they'll lose there permit. Can we do something like that?

Eric Evans – Make it a condition of approval that they don't transfer water rights on the property?

Ed Anthony – Or leave enough that they have enough to build houses. He's taking 14 acres of water rights up there basically. That's what he wants to build houses on, is 14 acres, right? So maybe he only needs to transfer 12 acres of water right up there or 10 or whatever.

Kathy Clarich – That still makes it the same thing for us, if he transfers the water rights and then it's not bare ground anymore, it's farmable.

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Sherwin Koehn – I might be a little ignorant here but did I understand that the ground can't be farmed with water or without water? I'm a little confused.

Ed Anthony – Okay, the State of Oregon has a law that says you can't take farm ground out of farm use to build houses on. If you transfer water up to farm that ground, now it's farm ground it's not dry ground. Now we're in a situation do we okay it? Because it's dry ground now and it's going to be farm ground later or do we not okay it because you are transferring water up there. Do you understand what I'm saying?

Sherwin Koehn – I'm just kind of wondering what are you going to do with 7 acres? You're not going to make a living on that.

Ed Anthony – I'm just telling you what the law reads. We've got to go by the law because then they could appeal our decision and then you'll have to fight LUBA, which is something you don't want to do.

Kathy Clarich – Our farms is 7 acres and (INAUDIBLE) has no problem with it. It depends on what you want to do with 7 acres whether you want to farm it or not.

Linda Simmons – What are you going to farm?

Kathy Clarich – I'd put hay out there, it worked for me. At this point is there anybody for this motion?

No Proponent Testimony

No Opponent Testimony

Sherwin Koehn – This is Sherwin and I have one questions. I've been listening with great interest. Someone said, as far as transferring the water, it sounds like I should get back with Owyhee Irrigation if this goes through and see if it's even possible to transfer it to non-farm ground. If it's classified residential is doesn't sound like I can even transfer it.

Kathy Clarich – That would be something you would have to check with Owyhee on. Eric, I have a question for you. Do we want to let him have the time to talk to Owyhee or do we just make a decision and he'll have to live with it?

Eric Evans – Well ultimately that's up to you guys but we can... you guys can have a discussion about any condition you want and the condition could be that he can't transfer any water rights to that because...

Kathy Clarich – If we let him make it residential, you're saying we could put a thing in that he can't transfer water rights to residential?

Eric Evans – Yes, I believe so. If I'm wrong hopefully Stephanie would interject but she doesn't seem to be.

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Stephanie Williams – I really don't think Owyhee is going to let them transfer the water right.

Eric Evans – Right, that's my thought to.

Stephanie Williams – Maybe this gentleman needs more time to go talk to Owyhee and maybe he wants to reconfigure his partition. I'm not sure.

Ed Anthony – So why don't we table this until our next meeting. That will give him time to do that and he can think about what he wants to do then. Is that alright with you Mr. Koehn?

Sherwin Koehn – Yes that would be fine. I will check more into this. It sounds like maybe they didn't know exactly what I was proposing to do.

Kathy Clarich – And you may want to put your lot somewhere else were you won't have the water.

Eric Evans – And Kathy, we'll want to continue this to a date and time certain so Tatiana, can you tell me what the date is? November 19th at 7:30?

Tatiana Burgess – That's something that we were going to discuss with the condition, that'd be a date that you and I had discussed. Yes, it's November 19th if we receive the approval from the Commissioners that it's okay to modify our typical date to November 19th at 7:30.

Ed Anthony – Yes we need to do that. If we don't we're going to have a meeting on Thanksgiving Day and that's not going to work.

Eric Evans – Yes, I actually think it's already set-in stone because I think I already made that commitment to the City of Nyssa.

Kathy Clarich – I think we already approved that.

Eric Evans – Okay. So it would be a continuance to November 19th at 7:30.

Kathy Clarich – Everything is still open to the public.

Ed Anthony made a motion to continue the hearing for application 2020-09-012 to November 19, 2020 at 7:30 PM. John Faw seconded the motion which was unanimously approved by the Commissioners present.

Applicant: Ted Cooper (Krystal Stewart, Realtor)
PO Box 1082
Shingle Springs, CA 95182

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Owner: Truett Hearn
4460 Highway 201
Ontario, Oregon 97914

Conditional Use Application for one Non-Farm Dwelling, Planning Department File No. 2020-09-014.

Kathy Clarich - Now is the time to hear the request for a conditional use permit for one non-farm dwelling in Exclusive Farm Use zone, for applicant Ted Cooper, Planning Department file 2020-09-014.

Ed Anthony - Kathy, I'm going to have to abstain from this one because my wife is the realtor that's working on this property.

Tatiana Burgess - I guess I need to ask if any other commissioners if they have an ex parte communication to disclose?

Kathy Clarich - I'm very aware of this place. I've known this place for a long time.

Preliminary Staff Report: Read by Malheur County Planning Department Assistant Director, Tatiana Burgess.

Tatiana Burgess - This is Planning Department file 2020-09-014, proposal for a conditional use permit for one non-farm dwelling. The applicant is Mr. Ted Cooper, represented by Krystal Stewart, Realtor. Mr. Cooper's mailing address is PO Box 1082, Shingle Springs, CA 95182. The current owner of record is Mr. Truett Hearn, 4460 Highway 201, Ontario, Oregon 97914. The property is identified as Tax Lot 101, on Assessor's Map 17S47E21, Malheur County Reference 18917. The property has direct access off of Highway 201 and is zoned Exclusive Farm Use. The current parcel size is 10.35 acres. It is currently vacant and the properties surrounding it to the north and south have non-farm dwellings on them. The properties that are directly east, across from Highway 201, are currently zoned Rural Residential. There will be a DEQ sanitation system required for the non-farm dwelling. The property is within the Ontario Rural Fire Protection District. On that note, we did receive a letter from Ontario Fire Chief past the time that we submitted the packets to you that we will need to introduce into the record with a couple of things that the Fire Chief has mentioned. There are 6 acres of water rights on this property and the majority of soil on the property are class I with a small portion of class III soil on the northwestern side of the property. Most of the property is in the flood plain.

Previously this had been part of conditional use permit no. 1995-9-28-4. At that time the conditional use permit was a proposal for two non-farm partitions and two non-farm dwellings. The property was split up and the partition was executed on partition plat 96-08. Subsequently the conditional use permit a 12 month extension, however, there was never a non-farm dwelling built through that permit, so the permit expired. Part of the conditions of that previous conditional use permit approval, the property has been disqualified for farm use for tax valuation and it has been assessed at the real market value for taxing purposes since 1996 so there would be no tax penalty due.

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In regard to the access, the property will be accessed through a shared driveway that is between this property and the property that is directly south of this which is currently shared with the owner, Mr. Truett Hearn. I have outlined in the letter from the fire Chief that there will be some conditional standards that have to be executed and we would recommend that we would put that in our conditions of approval. At this time, the only thing that I would have is to read this letter into the record.

Eric Evans – How about I read this into the record? This is a letter dated October 18th from the Ontario Fire Chief, Terry Laten. It says, ‘Hello Krystal and Ted. I have reviewed the overhead map of the property and I see some issues for the Fire Department with access. I have attached the International Fire Code standard for access roads. This is based on the 2018 IFC or 2019 Oregon Fire Code. The Oregon Code and IFC state the minimum access width to be 20’ up to 500’ in length and 26’ for over 501’ long. In parenthesis he has (D 103.4). I have researched some other departments in the State, and they allow for, if the access road feeds only two residences or no more than four structures, they allow they access road to be only 12’ wide with turn-outs provided every 400’. The turnouts must be 10’ wide in addition to the 12’ access road and a 30’ long 10’ taper on the ends, this allows two fire apparatus to be able to pass each other. The access to this property travels using a shared road that appears to be longer than 500’ long and then the access road on the property could easily be in excess of another 500’ long. I would allow this style of access road as long it also includes one of the Oregon Fire Code approved dead end fire apparatus access road turn arounds, as shown on Appendix D, including the turn around portions to be required 20’ width. The access road cannot have a grade steeper than 10% and has to have a required vertical clearance of 13’6”. A residence built on this site will need to meet NFPA 1142 fire flow requirements.” We have this marked as Exhibit 4, for the record.

Kathy Clarich – Okay, is Krystal here?

Krystal Steward – Yes, I’m here.

Kathy Clarich – Why don’t you explain a little more about the plan for this property.

Krystal Steward – So the plan for the property would be to go down about half way from the main road 201 to the water and have a cabin built and a place to park his horse trailer. He would like to fence around the whole property, obviously not the river side, and then have trees planted along the property also. He would like to run his cows or horses on the plat closes to 201 and enjoy some fishing.

Kathy Clarich – Okay. Somewhere I saw that he’s planning on having an RV spot.

Krystal Steward – That would be next to the house. That would be like the RV/horse trailer parking spot. So yes, I guess the horse trailer does have RV in it.

Kathy Clarich – So it’s not somebody that’s going to be staying in it or anything?

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Krystal Steward – No, that would be for his travels. He shows horses and so he travels quite a bit. He'd park there and then stay in the cabin and then get back in the horse trailer and RV and go back to wherever he is going.

Kathy Clarich – So he's planning on building in an area that's flooded before.

Krystal Stewart – Correct. He does know that it's the flood plain.

Kathy Clarich – Isn't that ground there irrigated?

Tatiana Burgess – There are 6 acres of water rights. Our understanding was that it would be built outside of the irrigated area. I'm not sure if it's actually being utilized at the time.

Krystal Stewart – No, it is not.

Kathy Clarich – It doesn't matter, it's still farm ground, it still has water rights attached to it. It even has... they grew grass there for years and years, or sod, it was like a sod farm. It is class one soil, that's why I'm like... (INAUDIBLE) to be built on would be this spot up along the highway where they have the water rights to it. Does anybody else have...

John Faw – Is it one parcel, 101 and 102, are they covered under the same deed creating one parcel even though we've got two tax lots?

Tatiana Burgess – They were separated out, so that was the original parent parcel. You can look at Exhibit 3, that partition plat outlines what that original parent parcel before 1995 looked like. It was split up essentially into 3, it retained the original parent parcel and then two non-farm partitions at that time which was 101 and 102.

John Faw – So this 101 is actually a separate stand alone parcel even though its covered under an existing deed covering multiple parcels?

Tatiana Burgess – Right, so it was created as a separate parcel. I think it's still currently owned by the same person so that's why it might be under the same deed but they were split up into three distinct parcels at that time, through that conditional use permit.

John Faw – When they did that partition, is that when they built the house on 102? Is that when that residence and shop was built?

Tatiana Burgess – Shortly thereafter, yes. When they were granted the original approval it looks like part of that they had requested a 12 month extension as... I didn't find a lot of information but either they hadn't made significant progress or for some reason they had requested that extension. That's the time frame that house was established on there but then nothing was built on the first proposed partition at that time.

John Faw – So that house was approved to go down in the farmable portion of that land?

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Tatiana Burgess – Yes. We do have a copy of that conditional use permit. We have the original approval. I can't speak to how and what criteria they used at the time but yes, it was approved to be split up into two non-farm partitions and two non-farm dwellings.

John Faw – With that being the case, can we deny them the ability to do the same thing they've already done?

Eric Evans – If they had a conditional use permit back in 1995, then that conditional use permit expired in 1999 and potentially had 2 years, so at least in 2001. At this point in time they are more or less working from scratch but it's really up to you guys what you want to do. They do have these legal units of land (you can see on that partition) and it's whether you guys want to allow them to put a residence on it or not, a dwelling.

Clark Forsyth – I just want to make sure I understand the lay of the land here. So, this is the old sod farm that you're talking about, did I hear you say that Kathy? So there's that gravel driveway the house is, if you're facing the river, the big house on the right with the barn and everything? So they're talking about, they want to build on the left side of the driveway where the sod was planted before?

Kathy Clarich – Yes.

Linda Simmons – I'm still confused about the water right thing.

Kathy Clarich – There's water rights to it. There's a little section up at the top that doesn't have the water right, if I remember right. We don't even have a map of the water rights that I can see.

Clark Forsyth – There hasn't been water on it for probably 15 years.

Kathy Clarich – Owyhee says they still have it so...

John Faw – Is this Owyhee water or a state permit out of the river?

Kathy Clarich – Owyhee says that they have 6 acres.

Eric Evans – Isn't the map on part of Exhibit 2? The second page... yeah there you go.

Kathy Clarich – That (INAUDIBLE) everywhere that they've been watering it but okay. I guess we don't have a plot plan or anything showing us where they want to build the house other than just a drawing that has, I guess a road and then it says cabin and then something else. Can you put a septic system in a flood plain?

Eric Evans – Yeah. The rules talk about minimizing it but yeah you can. What the reality that they're going to be facing with as much as a flood plain in this area is where the water level is at. I've never done any test holes on that side of the river right there, so I don't know what they're going to find for ground water down there. I'll throw this up here because you're talking about flood plain, I will show you the map with that.

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John Faw – What I'm seeing here is that other house that was already built on the other tax lot is in the flood plain as well.

Kathy Clarich – Yes.

Eric Evans – Is that one to the north of this property?

Tatiana Burgee – That one is directly south of 102.

John Faw – Well that one was approved. Have our rules and regulations, what we can and cannot do, has that changed dramatically since the first one was approved? It predates me by a long time.

Eric Evans – So this was back in 1995. I want to say that they may have done some changing in 2001. Stephanie might know that. She did say in the chat box that she doesn't remember.

Kathy Clarich – I don't know because we've had discussions before on the ones in the flood plain and I don't remember approving them, because of that.

Eric Evans – I don't have a lot of comments about flood plains stuff. I do know that, as of right now, we try to make sure that we adhere to the flood insurance programs rules.

Kathy Clarich – Do you know what the flood plain development permit is?

Eric Evans – Yes, I administer it. I'm the Flood Plain Administrator for the County. I administer the FIP for Malheur County and the city of Jordan Valley. We recently adopted a new flood plain ordinance and it's all stipulated out in that what they have to do. Most of the time, if they're putting in a house, they're talking about anchoring and putting in venting if it's a house on a foundation and stem walls, an elevation change.

Clark Forsyth – Eric, what year is this flood plain in? Is this the 100 year or the 500 year?

Eric Evans – What you're looking at right there is the 100 year, that's a 1% annual flood plain. Every year there's a 1% chance that that could happen.

Clark Forsyth – I was going to say, I've never seen that parcel flood but I've seen down at the other end.

Eric Evans – There's a property down the road where they put a... there was a manufactured home there, they put a newer manufactured home. We did a letter of map amendment that allowed them to build a house and basically designated that building site outside of the flood plain. It was proven with a survey that it was above that flood plain. Is it possible to do right here? I don't know, I don't know anything about it.

Kathy Clarich – If you map back to 101, that little section up in the north west corner is an elevated area if I remember right. I think that's why it's out of the flood plain. While we're thinking on this

let me ask if there's anybody here that is for this application. Is there anybody here that's opposing this application?

No Proponent Testimony

No Opponent Testimony

Closed to Public Testimony

Kathy Clarich – What do you guys think?

Clark Forsyth – I guess my first question is, is there a rule that... some of you are making it sound like it's something we can't do or is it something we can do. I'm not quite sure. People can build in a flood plain if they want to jump through the hoops can't they?

Kathy Clarich – Yeah, I think they have to meet all the conditions and stuff but it's whether they can get, if they finance it or try to sell it later they may not be able to...

Clark Forsyth – I understand that but that's their issue. That's not something that we have to consider is it?

Eric Evans – We have it as a condition of approval that they have to get a flood plain development permit. I mean, let's be honest, they have to anyways, it's a County Ordinance.

Kathy Clarich – We can make a condition that it's not in any of the irrigated areas too, right?

Eric Evans – Yes.

Kathy Clarich – Because there's about 4 acres that doesn't have water rights, unless it has river water rights. Nobody said anything about that.

Tatiana Burgess – I can definitely double check with the State Water Master but I don't believe that it does.

Kathy Clarich – Okay, what do you guys think?

John Faw – I'm thinking the house just south of this one was already done, exactly what they're trying to do here, under similar rules and regulations of what we've got today, which kind of jumps in the face of what we've been told we could do but it's been done so we can't say that it can't be done because it has been.

Kathy Clarich – But we could put conditions in.

John Faw – Because personal opinion is this ought to be developed. We need some residential, more residential in this country. Here's a parcel and it's on the river, there's no way to make it a bigger farm. It's a hobby farm, it's a toy.

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Rob Kindschy – I kind of agree. It has 6 acres of water right, there's 10 acres that leaves 4 acres, even if they needed to move a little bit of the land around or the water rights, where it is on it. Is still give them plenty of room to build as long as they don't run into flood plain trouble.

Linda Simmons – I think that the fact the one right next to it, it's like John said, it doesn't make sense that we don't do the same thing that's been done there because there is a precedence, just like in the Supreme Court.

John Faw – The thing is, this was done in '95 originally and laws can be changed in between too. But I just don't know how much they have changed because it all predates me and I don't have that history.

Kathy Clarich – The only other one that I can remember during my time was one that close to the Malheur River but they had to put the house up out of where the flood plain was, that was what we had stipulated at that time, that it had to be up above the flood plain because they were going to sell the lot.

Clark Forsyth – This is just one lot. They're not building this into a subdivision, this is just to put one house on, right?

Kathy Clarich – Well it's already subdivided.

Clark Forsyth – What we're looking at tonight is just for another residence.

Kathy Clarich – Right.

John Faw – (INAUDIBLE) houses in flood plains down in that Annex country and it can be done because they do it.

Clark Forsyth – There's hoops to jump through but they're aware of that. If they're aware of it then go for it.

Kathy Clarich - Okay so back in '96 they divided into parcels but one stayed (INAUDIBLE) lot 2 so is that the one, Tatiana, that you're not sure if it's actually separated on a deed or anything?

Tatiana Burgess – What I was trying to say is that ownership wise, Mr. Hearn, still owns the property to the south and owns this property as well. So ownership wise from a legal parcel stand point they are independent of one another. They have been divided out.

Kathy Clarich – Okay so this would have been in '96 so that's why I was questioning that.

John Faw – If there's a way, I would like to move forward.

Kathy Clarich – Tatiana, do you want to go through the conditions?

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Tatiana Burgess – The proposed conditions as we have them right now, they would all have to be respected. One thing that I wanted to address, again after receiving the letter from the Fire Chief, that is not currently outlined but we will need to create that access to satisfy the Fire Chief's requirements for the access road. Again, it's owned by Mr. Hearn on both sides but if this sale goes through Mr. Cooper will have to get an easement from Mr. Hearn to access the same driveway. As you guys were discussing, if you would like to propose for the building site to be outside of the irrigated area we can definitely add that in as well.

John Faw – We'd need to have the easements and road agreements in there as well, that they be in place. Because any time you get two separate people sharing an access point, you've got a hunk of road that's got to be somebody's. We can't create it without an access point and I don't know whether or not ODOT would grant them another access point off of 201.

Tatiana Burgess – So the access point that ODOT was referencing to (there's a letter from them included) they were talking about the same location right there that is directly on the property line. So they've already have got the permit approval from ODOT so I believe that ODOT was recognizing the same access point for both pieces.

John Faw - But we need an easement then and a road maintenance agreement.

Tatiana Burgess – To get an easement and maintenance agreement for the access point and then to make sure that it satisfies the conditions from the Fire Chief as well.

Kathy Clarich – I would like to put a condition that it not be built on the ground with water rights.

Clark Forsyth – Are you saying that you want a house up on that corner?

Kathy Clarich – I just said that's one place that they could build it where it would be out of the flood plain.

Clark Forsyth – Now you're talking about irrigatable land, two different things. So this whole parcel is irrigated if I remember correctly.

John Faw – Not quite.

Kathy Clarich – 6 acres of the 10 has water rights.

John Faw – Would it not be possible then to move some of this water right around still accomplish what we're trying to do, not take any land out of production?

Kathy Clarich – I don't know if he'd be able to move it around because it's a residential lot.

Clark Forsyth – Are you saying on this piece of ground here he can only put water on certain parts on it?

Kathy Clarich – I don't know Clark.

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Clark Forsyth – I just looks like it’s all been farmed at one point in time.

Kathy Clarich – It was all farmed. Maybe they had water rights from the river also, I don’t know.

Tatiana Burgess – The current water rights map we have is in Exhibit 2. So what you’re saying Kathy, is to have a house built outside of that colored in area?

Clark Forsyth - So the light green is the water right?

Tatiana Burgess - Right.

Clark Forsyth - Well they could probably still build a house then down by the river. I didn't know they were after sites on there on water tracking rights.

Eric Evans - That's actually the same exact map that if I look at the map from '95 it's not as technological as the map but it's the same map pretty much.

John Faw made a motion to approve the staff report and findings of facts. Linda Simmons seconded the motion which was unanimously approved by the Commissioners present with the exception of Ed Anthony, who abstained from the vote.

John Faw made a motion to approve one non-farm dwellings with the additional conditions; procurement of easement and road maintenance agreement, fire safety requirements for the access and that they build outside of irrigated land. Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present with the exception of Ed Anthony, who abstained from the vote.

Applicant: Jimmy R. Belnap
1764 3rd Avenue East
Vale, Oregon 97918

Conditional Use Application for One Non-Farm Dwelling and One Non-Farm Partition, Planning Department File 2020-09-013.

Kathy Clarich - Now is the time to hear the request for conditional use permit for one non-farm dwelling and one non-farm partition in exclusive farm use zone for applicant Jimmy Belnap, Planning Department file 2020-09-013.

Do any members of the County Planning Commission need to abstain?

a. Ed Anthony.

Do any members of the County Planning Commission have any conflicts to disclose?

a. None.

Do any members of the County Planning Commission have any bias to disclose?

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a. None.

Do any members of the County Planning Commission have any ex parte communication, including any site visits, to disclose?

a. John Faw

b. Kathy Clarich.

Does anyone object to any members of the Malheur County Planning Commission hearing this application?

a. There are no objections.

Does anyone challenge the County Planning Commission's jurisdiction to hear these matters?

a. There are no challenges.

Preliminary Staff Report: Read by Malheur County Planning Department Assistant Director, Tatiana Burgess.

Tatiana Burgess - Alright. So this the conditional use permit for one non-farm partition and one non-farm dwelling, Planning Department file number 2020-09-013 for the applicant Jimmy Belnap at 1764 3rd Avenue East, Vale, Oregon 97918. The property is identified as Tax Lot 1300 on Assessor's Map 18S45E, Malheur County Reference number 13688. The property is entirely zoned in exclusive farm use and its current size is 155.39 acres. There is a current dwelling on the property. The access point will be via 3rd Avenue East off of Highway 20-26. A DEQ approved sanitation system is already in place for the current house. The property is within the Vale Rural Fire Protection District. There are water rights for the parent parcel for through Warm Springs Irrigation District however, there are no water rights attached to the proposed partition site and there is a letter attached. The soil for this property is primarily class III and there is an insignificant amount of class I and class IV soils for the parent parcel. In 2018 the subject property was a part of a property line adjustment, Zoning file number 2018-04-017. That was a property line adjustment with the neighboring Tax Lot 1400, County Reference number 13690. As indicated in their cover letter submitted with the application, the applicant has waived their rights to a secondary non-farm partition at this site. So they are just wanting to split off the current and existing dwelling from the farm.

Kathy Clarich - So Mr. Belnap, please state your name and your address and tell us what your plan is.

Derrick McKrola - This is Derrick McKrola, Land Surveyor. I'm here to speak on behalf of Jimmy Belnap, he is here and is welcome to add any comments and answer questions if need be. Jimmy Belnap's request is super simple. You've got the parent parcel, 155 acres, and what we want to do is just separate the home site as a non-farm partition and a non-farm dwelling from the farm. Jimmy, can correct me if I'm wrong, is going to resign from operating/owning the farm and hoping to sell, tentatively, to his neighbor. We could not substantiate the opportunity to create a second parcel so we waived that right for that, most of the ground is farmed and irrigated. The 2 acres that we're asking for is not irrigated and it's an existing home site. Other than our request that it be a non-farm partition and a non-farm dwelling there shouldn't be an impacts to the surrounding areas and operation of the farm. I want to note the Fire Department's letter, in the first paragraph they indicate that it's in good standing and I believe the second paragraph may have been cut from a previous letter and I believe it's in error such that the property does have an existing home and

driveway. According to the County Road Department letter has no objections, that there's adequate access from the county road there. The irrigation district also indicates that the proposed area does not have irrigation. That's all we have.

Kathy Clarich - Does anybody have any questions? If not, is there anybody that is in favor of this action?

Proponent Testimony

Ed Anthony - I'm going to speak for Jimmy Belnap now that I've abstained. He's lived there for what 30 years? 40 years. What he is doing is selling his farm off and is going to retire and wants to keep his home site.

Eric Evans - I would like you to make it clear that you're doing this as a citizen and have had no ex parte conversations with other members of the commission.

Ed Anthony - I'm doing this as a citizen and I've had no ex parte communication with any commissioners. I just want to make that statement, that he just wants to have his house so he can still live in the same area he's lived his whole life. Thank you.

Kathy Clarich - Is there anybody else in favor of this action? Is there anybody in opposition to this action?

No Opponent Testimony

Closed to Public Testimony

Kathy Clarich - I don't know about you guys but I don't have a problem with this one.

John Faw - Looks really good to me.

John Faw made a motion to approve the staff report and findings of facts. Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present with the exception of Ed Anthony, who abstained from the vote.

John Faw made a motion to approve one non-farm dwelling. Linda Simmons seconded the motion which was unanimously approved by the Commissioners present with the exception of Ed Anthony, who abstained from the vote.

John Faw made a motion to approve one non-farm partition. Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present with the exception of Ed Anthony, who abstained from the vote.

Malheur County Planning Commission
October 22, 2020

There being no further business to come before the Malheur County Planning Commission, the meeting was adjourned.

Respectfully submitted, Kelsey Sullivan.

Minutes approved by:

Name: Kathy Clouch Date: 11-2-2021