

Malheur County Planning Commission

The Malheur County Planning Commission Meeting was held remotely, via GoToMeeting, on November 19, 2020. Kathy Clarich called the meeting to order at 7:30 p.m.

MALHEUR COUNTY COMMISSION MEMBERS PRESENT:

Kathy Clarich
Robert Kindschy
Teresa Ballard
John Faw
Linda Simmons
Ed Anthony
Clark Forsythe

PLANNING DEPARTMENT STAFF MEMBERS:

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

NYSSA PLANNING COMMISSION PRESENT

Doug Dewar
Harry Flock
Torie Gomez
Amy Martinez
Liz Haun
Richard Beck
Kathy Flanders

Jim Maret, City of Nyssa Counsel

NEW BUSINESS

Applicant: Malheur County Development Corporation (MCDC)
Grant Kitamura, Chair
522 SW 4th Avenue
Ontario, Oregon 97914

Property Owner: Malheur County, Oregon
Dan Joyce, County Judge
251 B Street West, #5
Vale, Oregon 97918

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

Eric Evans – I will be moderating this meeting to make this a little easier to have this combined planning commission hearing. Just for the record, both planning commissions opened the hearing. I am going to read the following statements for the record.

Now is the time to hear the application to approve the preliminary Arcadia Industrial Park Subdivision Plat for the Treasure Valley Reload Center, Industrial Park along with Farm Land. The property is identified as Tax Lot 100, Map 19S47E17, County Reference number 9641. The Malheur County Planning Department file number 2020-011-001. When called to speak please state your name, address and title (if any) 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 Chair. Testimony in question should not be directed to staff or directly to witnesses.
3. Do any members of the Nyssa or County Planning Commission need to abstain?
 - a. There are no abstentions from the members of the County Planning Commission.
4. Do any members of the Nyssa or County Planning Commission have any conflicts to disclose?
 - a. None.
5. Do any members of the Nyssa or County Planning Commission have any bias to disclose?
 - a. None.
6. Do any members of the Nyssa or 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 Nyssa Planning Commission or Malheur County Planning Commission hearing this application?
 - a. There are no objections.
8. Does anyone challenge the Nyssa Planning Commission or Malheur County Planning Commission's 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: the Joint Management Agreement between the City of Nyssa and Malheur County; Nyssa City Code 9-4C-2C, 9-4C-4 and 9-4C-5.

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Testimony, arguments and evidence presented must be directed toward these approval criteria or other criteria in State law, the City of Nyssa and the Malheur County Comprehensive Plan or the Malheur County Code or the Nyssa City 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.

I would open this up to the applicant that wants to make any kind of presentation. Do we have anybody on the line.

Applicant Testimony

Brad Baird – Thank you for your time and bringing this before the planning commissions. As Eric mentioned this is the preliminary plat for the Arcadia Industrial Park Subdivision on behalf of Malheur County. This subdivision as created for one primary purpose with several others but the first purpose was to create the parcel necessary for the Treasure Valley Reload Center project. To encompass the Reload building, dock and rail facility necessary to serve it and also the potential road right-a-way to properly serve the site for incoming agricultural commodities. So the subdivision has a total of six lots so hopefully you have the subdivision plat in front of you. Plot one, which is the subject lot is the Reload Center, the road rights-of-way, and the area necessary for the rail, wetlands area and wet land mitigation area. The other lots are lots that were created just to break up the remaining property into (INAUDIBLE) squadrants. There’s a northeast and a northwest and a southeast and southwest lot. And so this partition plat was created to create these lots and currently Malheur County owns the property, all of it, and the project funds for the Treasure Valley Reload Center project are going to purchase back lot... I’m sorry, I think I got the lot number wrong Eric. It’s going to purchase the Treasure Valley Reload Center lot necessary for the project.

Eric Evans – I believe that’s Lot 2.

Brad Baird – I’m sorry, Lot 2 is the lot that will encompass the Treasure Valley Reload Center, wetland area, wetland mitigation area, rail and road right-a-ways.

Eric Evans – I am sharing that plat, just so you know, on my screen.

Brad Baird – Yes, I can see it there, thank you. For this project we will extend utilities in these road rights-of-way and the roads will connect to both Arcadia Boulevard and Gem Avenue and

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Gamble road on the north, south and west. And then we will have utilities in place for future expansion to the remaining lots but for the interim to serve the subject lot, Lot 2, which is just the Reload Center warehouse. We will install water/sewer service just for that building and it will consist of a well for water service and a septic tank and drain field for sewer service. We will need to get water and sewer service eventually extended from the City of Nyssa for the remaining lots and that design is pretty much completed and additional funding is being sought to get those utilities extended in the near future.

For the interim, just so everybody is aware, obviously only Lot 2 will be developed which includes the Reload Facility but it also includes a wetlands mitigation area so I want to make it clear to everybody that there is an old Arcadia Lake present on each side of the road and we've delineated all the wetlands associated with the property and all the wetlands that the Reload Center project will impact and have submitted that to the Division of State Lands who's approved the delineation, they agree with it and we're also creating a mitigation area because obviously we have to mitigate and create wetlands at a slightly higher ratio than we impact. So the rail lines and the site development will impact those wetlands and we'll expand those wetlands to the south which will be present in the southern rectangle and triangle area of Lot 2. So this project will include the creation of the additional wetlands on Lot 2 to mitigate the impact of the wetlands.

I think that's pretty much it for what the project entails. Obviously, the intent of this entire property is with these rail spurs and lines adjacent to the railroad main line. The site will be able to facilitate handling an entire unit train off of the main line and then we'll be able to process that train for onion loading purposes and other commodities as well for the Reload Center. The spur will be able to utilized and expanded upon the (INAUDIBLE) of the lots. The object was to create the infrastructure necessary to provide (INAUDIBLE) to continue development of the remaining lots and time occurs. Obviously we are working very close with Greg Smith and the Malheur County Development Corporation on these projects. I do know in talking with them that there is considerable other interest already in this site beyond the Reload Center so it will be nice, through this effort here, to get these parcels created so we can continue the economic development opportunities related to this subdivision plat. I think, Eric, that's it. I will certainly entertain any questions or follow whatever your process is here moving forward.

Eric Evans – Let's move forward and I'll ask everybody. I kind of skipped over my staff report part. Does anybody want to hear the staff report from the County or did Brad kind of sum up everything that we're doing here today? How about from the Chairs, Kathy and Jim, what would you guys like?

Shay Meyers - This is Shay Meyers, can you summarize what is taking place at this point in time?

Eric Evans – Today both planning commissions are here to approve the preliminary subdivision plat. This is the public hearing for this but there will be one other step without a public hearing to finish the final plat. Like Brad said, this is for the Arcadia Industrial Subdivision plat for the Treasure Valley Reload Center. Back in the end of 2018, both these planning commissions and both governing bodies approved the increase of the urban growth boundary and changing this

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property from exclusive farm use to Nyssa industrial. There is a chunk of it that will remain exclusive farm use, some around the 80 acres as a part of this subdivision plat but the remainder of it will be six tax lots.

I already went over the property identification. It is a split zone parcel, again EFU or County C-A1 and N-1/UGA, so it is in the urban growth area. Currently the parcel is 297.6 acres. The access for this is shown on the plat, there's two roads. There is Reload Street and Railcar Avenue that are being proposed so that will be the access for each one of the lots. Currently the subdivision will need onsite wastewater treatment systems. All of that will be handled by the County DEQ agent which is the Malheur County Environmental Health Department. The parcel is within the Nyssa Rural Fire Protection District. The parcel is not within the 100 year flood plains and there's no natural hazards that have been noted besides the wetlands that Brad had talked about. There is some water rights on this property. There's a well and there is 52 acres of water rights from the Snake River. Again, just the zoning history is that both planning commissions approved this to be added to the Urban Growth Boundary back in 2018.

So we will move on from the staff report and I will entertain any testimony, unless anybody from either of the planning commissions have any questions up to this point.

Kathy Clarich – I do. On one of the map it shows what looks a subdivision of (INAUDIBLE) lot, is that part of this or what?

Eric Evans – A subdivision of what?

Kathy Clarich – It has a bunch of (AUDIO CUTS OUT) and part of it says subdivision and part of it says industry.

Eric Evans – Ed's showing me what you're looking at. That is the tax lot map and so that is Township 19 South 47 East Section 20, so that is the entire map that shows that. What we are talking about is...

CONVERSATION REGARDING ABOUT WHICH MAP TO REFERENCE.

Eric Evans – This one is showing between Gamble and Columbia and this one we're talking about is between Gamble and Gem, so I guess I'm not sure... that's not even on the partition plat. I'm not sure how that got in there. I think what happened is we probably printed off the wrong section map. So, what we're looking at is actually the map to the north of the map that you have. This is actually the tax lot map that is produced by the Oregon Department of Revenue and it's showing the Nyssa Industries property, if you remember when we did all of this Nyssa Industries was already part of the UGB and that's what this is showing. This has nothing to do with it. I apologize I think it's just the wrong map.

Shay Meyers - Is there a map available for those of us that are being impacted by the agreement and decision being made tonight?

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Eric Evans – So this map actually available on OR Map, it's just a map that.... So if you go to ORMAP, it has every tax map in the State and definitely Malheur County.

Shay Meyers - Excuse me Eric. Is it available for the hearing tonight for us to be able to see without doing a google search?

Eric Evans – All this is going to show is currently what... So it would be 19S47E17. The one that was included in the packet is Section 20. So this is what we're looking at, this is currently the map. So if this subdivision is approved this map will change to reflect the new plat. So between Gem and Gamble Island and to the east of Arcadia is the property that we're looking at.

I'm going to move on and ask for any testimony in favor. Any proponents of this subdivision.

Shay Meyers – We need to see the map to see if we're proponents or opponents. The map here does not show us what the components are, as property owners adjacent to this, we need to know what is specifically being proposed.

Eric Evans – So we have had this in my office and part of the notice is that it's been available on our website and available in my office for anybody to come and view. As a matter of fact, the one that I showed earlier on my screen I pulled off of our website, that's where I went and got it from. So notice was provided as required in our County Code and that's all we can do to try and provide that information as best we can.

Shay Meyers – When I called your office and asked for this what I was sent is not this map.

Eric Evans – I never sent you anything because I was never asked to send you anything.

Shay Meyers – Tatiana, they sent me the packet. And what was on your website that I printed off, was not this map.

Eric Evans – Right, because this map has nothing to do with the application.

Shay Meyers – It's the one that has Columbia and Gamble on it in the application.

Eric Evans – This is the map that is actually applicable to this. The ORMAP map is not applicable. We had a question from our Planning Commission Chair of whether the one that was included in the packet that looked like it had a whole bunch of maps and that was a map that was in there in error, that was my fault and it is a map that is not even part of this application. So, this subdivision plat that we are looking at right now is the map of the proposal. I will go one more time, if there is any testimony in favor or any proponents?

Proponent Testimony.

Shay Meyers – 725 Canyon 3 Road, Ontario, Oregon 97914.

Shay Meyers – As a proponent I would like to make a statement. I want to be very clear that we are in support of this project but we've been in constant meetings with MCDC for over a year.

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We've been assured by Greg Smith and Brad Baird that we would be treated fairly and we believed in that. All we are asking for with the approval today is that there are conditions that at least one of their proposals for the consistent and constant access to our property, 1,300 acres adjacent to this project remain. That is number 1: Chestnut Road being extended from Gamble Island Road to Gem and the frontage road being completed from King Avenue to Gem Avenue; or number 2: a new private crossing being put in place at the single track and the frontage road being completed and improved from King Avenue to Gem Avenue, both are parallel to the current railroad track. That condition is important because it's what has been spoken of and promised for better than a year and now we're here for the final approval and nothing has come to fruition as has been dictated.

Eric Evans – I actually have a question, Shay, from Ed Anthony. He wants to know how you get to that property now.

Shay Meyers – We cross at a private crossing on Gem Avenue.

Ed Anthony – So are they taking that crossing out if they put that in?

Shay Meyers – Yes.

Ed Anthony – That's fair.

Craig Froerer – 669 Columbia Avenue, Nyssa, Oregon 97913.

Craig Froerer – I have some friends that have a subdivision and in building that subdivision they are going off of a county road. To build that subdivision that had to guarantee two accesses to that subdivision in case one of the roads got blocked for first responders to be able to respond to a situation as you asked at the beginning of this or you stated at the beginning of this, you asked for two accesses to this property that your trying (INAUDIBLE) your subdivision on but you're trying to make my property that is across the road, 1,000 acres with 7 homes on it, only has one access. It would make travel time for first responders from 12 minutes to 34 minutes and it would be on a road that is impassable in the wintertime because it is not improved in any way. Even tonight you cannot drive on that road, it is just a dirt road that is very slick when it gets wet. So we are asking for two accesses to this property so that we can have the same thing that you are asking for your subdivision that you asked for tonight. Thank you.

Allison Reynolds – Attorney with Stoel Rives , LLP, 760 SW 9th Avenue, Ste. 3000, Portland, Oregon 97205.

Allison Reynolds – I'm here representing Froerer Farms. We've been their attorneys for quite some time helping with their business operation and I relatively new to this project but understand that this is a very important undertaking for this County and especially for farmers like Froerer's and others in the community. I want to stress that this is a project that is very well supported by this client and other but as they discussed in their testimony their land relies on existing private rail crossing at Gem Avenue. It is critical for their business and residential uses. We understand that the current plan for the facility is to shutter that private crossing and we are

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hoping that all of the work that has been going with MCDC will facilitate establishing new access as they discussed in their testimony. But without a final resolution on that connectivity issue they are very concerned about this moving forward to the next stage. So we are just asking for a condition of approval of the preliminary subdivision requiring either extension of the existing crossing access, which I think generally is not the preferred option as far as what we have heard from folks or establishment of a different new adequate access. With continuing to work with MCDC and Union Pacific to address this issue so this is something that for some reason that cannot be added as a condition at this point we would ask for a continuance or to leave the record open so that we could facilitate trying to figure out an adequate solution here.

Eric Evans - Thank you Allison. We're still continuing on so I would still entertain any other proponent testimony or anybody in favor. So I'm going to move on to opponent testimony.

Opponent Testimony.

Robin Froerer - 661 Columbia Avenue, Nyssa, Oregon 97913.

Robin Froerer - My main comment that I would like to say on this is with as many acres we have on this farm we have the option of an additional 10th home site. For you guys that are on planning and zoning you know how rare and few those are on our side of the state but if we lose this access those home sites become a lot less desirable. There aren't a lot of people that are going to want to travel 10 miles on a dirt road. I would just like you guys to take that into consideration before you vote on this. It's been said numerous times tonight we've been working on this for over a year. I kind of went through my emails tonight and this started in June of 2019 with Greg Smith and Brad Baird. Just real quickly on January 12th they talked to us about getting a new private crossing or getting an easement through the Albertsons land. On January 13th we asked for an update. They said they had maps and easement descriptions ready and that the road that they were going to improve would be 20 feet wide. We didn't see that at that time. They also said that they would be getting someone to prepare these easement agreements. On March 3rd I again asked for an update. March 4th they said, 'we have copies for you to review' although we didn't get them at time. On March 8th I had talked about putting in a new private crossing. Brad Baird said, 'you know I think that's a great idea, that's probably our best option, let's go that way'. On April 4th he said, 'the private crossing was very promising. We have learned it's a very good possibility of securing a new private crossing'. On June 3rd he said, 'We believe we can get an easement for a new private crossing. Where would you prefer the private crossing?'. On August 13th they went back and said, 'okay we're going to go Albertsons' and see if we can get the easements through there.' So we've been in constant contact, this goes on, we've had other meetings in November, the 2nd, 11th, the 13th. I finally jumped in the first of November and started calling Union Pacific myself because we were worried that we weren't going to have anything in writing. We had a very positive conversation with Union Pacific, Mr. Anderson. And then I called back a few days later and he had been talked to with someone, he said things had changed, their attitude had drastically changed. All we are asking for is that we have two easements, two rights into our property so that we don't lose the value of these home sites and just additional cost that would be placed on us. We also have, if you look at parcel 2000 it would become landlocked. It has one home site and around 70 some acres and with losing this

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we will never be able to sell this, it's landlocked, that's the only right of way it has in and out of that.

Eric Evans - Okay. Thank you Robin. I will entertain anybody else. Anybody that is in opposition or any opponents?

Sharla Froerer - 3255 Kelser Lane, Nyssa, Oregon 97913.

Sharla Froerer - I have been learning a lot of things through the years as this project moves forward and I understand that it's going to have a positive economic impact on our valley and a lot of job opportunities for people. I'm encouraged by that. I think it offers a lot to everyone as a whole. I remember looking at the initial proposals and seeing those come out in the newspaper and seeing that the project, in the beginning, started just south of Gem. That has now been extended and crosses over Gem which results in the closing of that railroad on Gem. I've been to some of the meeting with Greg Smith and with Brad and had lots of promises along the way of how they were going to help to make sure that this didn't have a huge financial impact on our business as a whole. We farm over a thousand acres over there and we're in a farm community so I think that every understands the impact that has. By the time that you spend working the acres, the amount of times that you send people over there to do water, to take a tractor over, to take produce in and out of that piece of property on the a thousand acres over time it is going to have a negative financial impact on our business. We wanted to work and do what was best for the valley as a whole and part of the reason that we felt good about that was that we had a lot of assurance that we would be given another means of access and I also think we have to take into consideration the safety impact it has for anyone living over on that other side with limited access for fire and ambulance to come in there. I just wish you guys would take that into consideration as you move forward with this. It's not something that we want to see stopped or cause problems for. It's just that we would like taken into consideration when you make this decision. Thank you.

Eric Evans - Thank you. I will entertain any more testimony in opposition.

Shay Meyers - 725 Canyon 3 Road, Ontario, Oregon 97914.

Shay Meyers - There's significant added operational costs to us, Sharla alluded to that. We've estimated what those are but just in travel, lost man hours, road construction costs to build up roads because of lost access, continued road maintenance, snow removal, additional wear and tear on equipment and an additional 4000 trucks entering 201 from King Avenue, that is roughly how many trucks we move in and out of there during harvest. Those numbers that I just stated in those 6 different segregated areas constitute an additional cost in operations for us of just over \$300,000.00 per year. That is why we are concerned here. Again, we are in favor of having the project in place we just need to have the condition there so that we have access on both sides of this property and don't have all those additional miles to traverse and don't have all of that additional maintenance to take care of on an annual basis.

Eric Evans - Thank you Shay. Any other testimony in opposition?

Bailey Meyers - 661 Columbia Avenue, Nyssa, Oregon 97913.

Bailey Meyers - I just want to talk about how taking the zoning is going to affect my business of agritourism and the goals that I have set to help grow agritourism, not just for my business but also in the area. Agritourism helps bridge the gap between consumers and producers. By changing this zoning you're creating an undue hardship however it doesn't necessarily have to be this way. By changing the zoning you are showing that you guys value select individual profits more than mine and my families. Everyone keeps hearing that this project will make millions but at our cost. It will create a detrimental effect to the property and the business, specifically that I have been growing. You add five miles on a dirt road for attendees to come visit an agtourism at their current location. While it may not seem like a big deal to many of you, five miles on a dirt road for many people who have never driven on dirt or even been to a farm can be a deciding factor of whether or not they are going to come and learn about agriculture. I have been growing the agriculture tourism events at this location for multiple years and have been pursuing a degree in agricultural tourism since 2015. I will be receiving that degree this December, ready to start my business full force. While Covid has already created many hardships this year with the tourism industry, this is just another complication that can really stop this plan right in its tracks. So I just urge you to really focus and recognize the cost that it's going to be taking, not just for the agriculture communities, but also other business opportunities.

Eric Evans - Thank you. Somebody else is sitting down there so I'm going to assume that they are in opposition.

Matt Richards - 3255 Kessler Lane, Nyssa, Oregon 97913.

Matt Richards - I'm in opposition. I'm just going to reiterate some of the things that have been stated. At the end of Gem my parents have a place and they are both 82 years old. Access is what this is about from where I sit as a son worried about his parents. I grew up next to a railroad, right? We had a big cul-de-sac and Burlington Northern insured that there was two ways into our property and my neighbors. I just fear with the switching yard and you leave King open and when trains come in, and again a lifetime living next to a railroad, a quick transition into a switching yard for a rail is not that quick. With what Craig pointed out in terms of the added time for first responders, it's concerning. This Gem access has been there for 100 years. You're effectively land locking my parents and this farm by this decision. I have seen a map, a couple maps tonight, I just can't quite understand why we have to go 80' past Gem to close this road and why we can't move 80' south and keep it open. You've heard the reasons why it's important. I appreciate your consideration, thank you.

Craig Froerer - 669 Columbia Avenue, Nyssa, Oregon 97913.

Craig Froerer - This is Craig Froerer in opposition. So, as you've heard, we've been promised many time access in another way and that's been talked about for a year. I was at the first meetings that we met with Greg Smith and the representative from Al Scott and he said it looked very promising. That has not come to pass. Nothing in writing has been given to us is very concerning for us not to have another access to this... to our farm. First responders, our operation on a day to day basis is going to make a lot more miles for us to travel. So we are in opposition

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to that unless we can get another access guaranteed to us so that we can come to this property from the south and not only from the north. Thank you.

Jim Larsen - 3273 Grey Avenue, Nyssa, Oregon 97913.

We were supposed to have a meeting just a few hours ago with Greg Smith and few of his associates and we were supposed to clarify different things that are coming to pass before this meeting, as we knew it was coming. We didn't have anybody show up. We sat here ready to go and we had kind of all of our ducks in a row, especially with everything we've talked about the last few weeks and months. It was really upsetting to not see them show up to put their two cents in and make us a little more comfortable with the direction that this is going. With that said... actually I'll just end it right there. Thank you.

Eric Evans - Thank you. And it sounded like that was everybody that was there. No? You still have more?

Unidentified speaker - Yeah we're finished but there's more people here but we can't get them to talk.

Eric Evans - I'll do enough of that for everybody tonight. It's kind of an interesting way to do these hearings but thankfully we have these virtual ways of doing it but it actually goes fairly decent. Any other testimony outside of the ones we've had? Anybody in opposition, any opponent testimony?

Okay, we're going to move on. Is there any public agency testimony? I'm not sure that there was going to be but I'll offer that anyways. I am going to go ahead and ask for a rebuttal. So I'm not sure, Brad if you... Greg, whoever, you do have 10 minutes for rebuttal.

Applicant Rebuttal

Brad Baird - Okay, I lost my computer so I'm on my car phone. I just want to clarify for the planning commission members just to let them know about all of the access discussions that we have been having with Robin and her other family members that she had mentioned. Those have been ongoing and they are still occurring. Part of the challenges we're having from our end on trying to work with the Froerer's to give alternate access is we've gone through 4 or 5 different alternatives, well actually probably 2 or 3. One of them was to give them access to south to Gamble so they didn't have to drive all the way around to King and it took quite a while to get a meeting organized with All Scott Farms, which we just recently completed and they weren't willing to provide an easement. We've been talking about providing road improvements out on the north end for a more direct route to the Froerer family operation to King. We've also talked to the railroad about potentially moving the Gem crossing north, closing the Gem crossing but moving it north to where it gets back to a single line, that would require an easement back across Dennis Scott's property back to Gem of which he is potentially agreeable to. The challenges we're having are mostly related to the railroad. We've been pushing hard on the railroad just to clear direction on how the Gem Avenue crossing is going to be handled because of the Reload project and because of the switching operations. It's been a little bit of a moving target so that's part of the challenges we've had in meeting, is every time we turn around the situation changes a little bit. So it's been a challenge on our end as well. Things that we've learned is the Gem Avenue crossing will have to become public if it remained open and so that's in accordance with

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ODOT, who handles (INAUDIBLE) crossings on the mainline. If that's the case it would require crossing arms which that's all possible. The problem is that the railroad has indicated that they can still block a crossing like that for hours at a time while they're switching so it doesn't appear that that's a good option because while it would keep it open it would still block access through there while they were switching. So we're trying to figure out alternatives and it just has been a challenge. We've hit some dead ends but we're still working on it and still trying to be good neighbors and to figure out an alternative for the Froerer's that minimizes the impact and still works. Those option just haven't come to fruition. The easement to the All Scott's was the best option and that wasn't viable based on what we learned about a week ago. So it isn't resolved and so that's why we're to a point where we still haven't been able to provide the Froerer's with a viable outcome because we just can't get there through all the different avenues we've chased. We haven't given up. I apologize to the Froerer's for not making the meeting today. I had a family medical emergency and I just couldn't make it but we're still working on it and hopefully we can come to some kind of outcome that will be more favorable than where we are at right now. We are really at the mercy of the railroad. They've kind of changed their position a little bit and are getting a little bit more firm on saying they're going to close Gem so we've got to figure out how we can get better access for the Froerer's or improved access through this process. It's still in motion, we're still trying to work on it. We haven't given up but we've sure run into a lot of road blocks. So that's where we're at from the project end.

Greg Smith - I really appreciate the comments of the Meyer's and the Froerer's. They're most appreciated. We're trying to do everything we can to be a good neighbor. There's no doubt about it they're on the other side of the UP mainline and so perhaps by the nature of my position I become a lightning rod that's easy to attack and I appreciate that. What I would share with you is that we're doing everything we can to try and figure out how do we accommodate this land owner on property that has value, there's no doubt about it. We're at the mercy of Union Pacific as Brad Baird, President of Andersen Perry, has shared. What we're trying to do is figure out how do we accommodate Union Pacific and at the same time be a good neighbor and so we're committed to that. With all that said I would share with your planning commission the issue at hand has nothing to do with the Gem crossing. It has to do with subdividing some property so we can move forward with economic development. We're going to continue to reach out to our neighbors to be good stewards, to be good neighbors but that's not the issue we're (INAUDIBLE). So we would appreciate your confirmation. We'd appreciate and aye vote so we can move forward for the betterment of economic development in Malheur County.

Eric Evans - Thank you Greg. Do you have anybody else from your team that might want... I think you have a couple more minutes left maybe.

Greg Smith - No sir.

Eric Evan - Thank you very much. So I guess I will entertain any kind of questions that anybody from the planning commissions has, just the planning commissions right now, if there's any questions.

Ed Anthony - So my question is, they have two accesses now, right? The Froerer's.

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Shay Meyers - That is correct. We have two access points at this point in time.

Ed Anthony - And they're trying to take one away from you? Or both of them?

Shay Meyers - They are taking the one on Gem Avenue. So it's right at 2 miles from Gem to King, so they are taking the southernmost access point. Which effectively land locks, well I'll just leave it there.

Eric Evans - Any other questions from Nyssa or Malheur County planning commission members?

Kathy Clarich - Why is Greg saying that this has nothing to do with what we're trying to do today? Because obviously if they're going close something that is going to affect some of the other farm ground I would think that it would be something that we would want to put a condition or something in if we approve it.

Eric Evans - Is that a question directed towards me or a question directed towards Greg?

Kathy Clarich - Whoever wants to answer it.

Eric Evans - I'm not hearing Greg step in. The way I take that is he's just saying that that rail crossing is not part of this subdivision plat. It's not a piece of the subdivision plat is how I am taking that from him. That doesn't mean that we have to approve it. As a matter of fact if you guys would like and if there's no more questions I would give you my staff recommendation if the planning commissioners would like.

Ed Anthony - I would like that.

Eric Evans - If nobody has any questions I guess it would be my recommendation at this point in time is...

Shay Meyer - Can I make one comment before we move on from here?

Eric Evans - Actually we're done with the testimony right now. I'm going to make my recommendation and listen to what the planning commissions want to do.

My recommendation at this point in time would be to...

Bailey Meyers - Can we not do a rebuttal with what Greg and Brad said?

Eric Evans - We do not have opponent rebuttal, it's not allowed.

Shay Meyer - Brad told us in a public meeting he told....

Eric Evans - So right now we're moving on from that. My recommendation at this point in time to both planning commissions would be that we do a continuance. We continue this to a date and

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time certain. That's the advice that I've received and that's what I think we should do. Give the applicant some time to work with the Froerer's and give them some time to work some of these details out. That's my recommendation at this point in time to the commission. I would be open to any conversation from any of the commissions as to what you guys want to do. Let's go ahead and start with the City of Nyssa's Planning Commission.

Torie Gomez- This is Torie. So in doing this continuance, is there any way to put a date on insuring that Greg and Brad have the opportunity to talk with the Meyer's and the Froerer's so that they can get this resolved? I don't know if that would help them and us in order to be able to move forward.

Eric Evans - I don't think that there's any way for us to direct that without some kind of an order from the commission. I can tell you this, the continuance, this is from the County's stand point and I guess I'd have to work with Jim to make sure that Nyssa was on the same page, from the County's stand point we will not be having a hearing in December, we've cancelled that hearing. So the County would continue this to a date and time certain. That date and time would be January 28, 2021 at 7:30 P.M.

Torie Gomez- So that gives them about 2 months to work on that.

Eric Evans - Correct. If that's what the commissions chose, yes.

Kathy Flanders - This is Kathy from Nyssa. I would see a report, also, from the Fire Department and Ambulance included in the report we get in January. (INAUDIBLE) with the new access.

Eric Evans - Okay, I understand. So you want something from the Fire District to comment on closing of the Gem Avenue crossing in regards to the access to the Froerer's, correct?

Kathy Flanders - Yes.

Eric Evans - Anybody else from Nyssa?

Richard Beck - This is Richard Beck from the Nyssa Planning Commission. Definitely we should not be approving this plat until this access is resolved. I don't even think we should be talking about making it as an issue. There's got to be something (INAUDIBLE) from the railroad making a decision. They tend to take years to do nothing. There's a lot of pressure coming right now but this should not be approved in my opinion.

Eric Evans - I'm not your guys chair but as the moderator I think myself and the Nyssa's chair would entertain a motion for a continuance, for a date and time certain. Am I correct?

Kathy Flanders - That's correct. Do we have somebody on the Nyssa Planning Commission to make a motion on that?

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Greg Smith - This is Greg Smith. I fully support the action you're taking. It makes perfect sense. Please know that this is outside of our control and in the hands of Union Pacific railroad. But we will do our very best we can to be good neighbors with the Froerer's.

Torie Gomez made a motion to continue the hearing for the Application for the Preliminary Arcadia Industrial Park Subdivision Plat for Treasure Valley Reload Center, Industrial Park and Farm Land to January 28, 2021 at 7:30 PM. Amy Martinez seconded the motion which was unanimously approved by the Commissioners present.

Ed Anthony made a motion to continue the hearing for the Application for the Preliminary Arcadia Industrial Park Subdivision Plat for Treasure Valley Reload Center, Industrial Park and Farm Land to January 28, 2021 at 7:30 PM. Linda Simmons seconded the motion which was unanimously approved by the Commissioners present.

Eric Evans - I would really extend a thank you out to Nyssa. I know these are trying times right now and doing this electronically is not the easiest way to do but we're figuring it out. I feel like that was pretty decent tonight. I appreciate everybody's time. I look forward to a little bit of a break for Malheur County this next month but Nyssa we will see you then and you guys are more than welcome to hang out with us for a little while longer. We can take maybe a five minute break, if that's alright with you Kathy, let them shuffle out and we'll continue on with Malheur County business.

Kathy Clarich - Okay, that's fine. We'll take a five minute break.

CONTINUED BUSINESS

Applicant: Sherwin Koehn
450 Douglas Road
Ontario, Oregon 97914

Representative: Sherwin Koehn

Conditional Use Permit for two non-farm dwellings and two non-farm partitions. Planning Department file number 2020-09-012.

Kathy Clarich - I think the big question we had last week was whether the water rights could be put over on the residential from the ditch company. The 26th of October was the last response you got from Owyhee, is that correct?

Tatiana Burgess - Correct.

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Kathy Clarich - What I see on it, it says, 'no water rights are moved to the location of the new houses'. So I'm just assuming that he's talking about right where the houses are put rather than onto the...

Tatiana - What that letter is specifically talking about... as it was at the time of the hearing and as it stands today, the proposed partition site, that 15 acres above the canal does not have any water rights. Mr. Koehn had submitted the application to in the future transfer 13 acres of water rights to those potential home sites if this gets approved. **(INAUDIBLE)** Irrigation District it said that they wouldn't really have any reservations with that. It didn't seem like it mattered to the, per say, if it's going to be used for residential or not. Their only concern, as listed in that email, is that in order to retain the water rights that they have to be used at least once every five years otherwise they lose it. So that's the only thing that was outlined in that email but it did not seem that it mattered to them whether or not the land was going to be used for residential purposes or not. From my understanding Mr. Koehn had a similar conversation with them as well and he's on the line and should be able to speak to that.

Kathy Clarich - Okay and then the other thing it points out is a separate delivery system to both properties.

Tatiana Burgess - Correct.

Applicant Testimony

Sherwin Koehn - Address 450 Douglas Road, Ontario. I am the farm owner. That is how I understood it from them also. There only concern was the beneficial use of the water rights, if not, after 5 years they're subject to being forfeited.

Kathy Clarich - Okay, is there anybody else that has any comments on this? Does anybody have any questions for Mr. Koehn? Eric, we left it open so do I have to ask for proponent and opponent testimony here again?

Eric Evans - Yeah, go ahead and ask for the testimony.

Ed Anthony - I have a question. So right now at this point in time he's got two 7.5 acre parcels, right? Which is 15 acres. And he's got 13.7 acres of water he wants to transfer up there, right? Is that correct?

Eric Evans - Yes.

Ed Anthony - So here's my question, he needs to makes sure if they transfer that water it's not going to be where the house is going to be built. And each on is going to have to have what 2 acres to build their house on?

Eric Evans - I think that's part of the point of what Tatiana was saying. Let's say if they did transfer the water rights to where the house is, they can technically use that so they'll lose it.

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Ed Anthony - But we can't, as planning and zoning, we can't lose water and that's what's going to happen, they're going to lose the water and that isn't our goal.

Tatiana Burgess - One thing that I want to add is at this point we haven't gotten an actual site plan submitted because the intent was that these proposed partitions are going to be sold and so Mr. Koehn does not have an actual site plan. We can definitely add that to the conditions if that's what you guys want to propose, that the home sites are outside of the irrigated land. But I just want to point out that at this point we do not have a detailed site plan outlining the exact location of the home sites.

Kathy Clarich - And that's something that we usually require before we even consider it. So that's what I was just going to ask, if I was just missing it or if we didn't have one.

Tatiana Burgess - We did not have one. It was something that he's trying to secure for a future sale basically.

John Faw - My only question to this is when we first looked at this, this was dry ground. It met all of the check marks. With water being transferred to them at the same time that this is going on, does it still check off all of the boxes?

Kathy Clarich - We still don't have any plot plans so we still don't know where they're planning on building. We don't know how far in they're going to be driving to know what they need to set up which I guess we just put it in the conditions if we approve it for the roads and the rest of that.

Tatiana Burgess - So to John's point, I think, the proposed partitions would be subject to a whole different other discussion if it had water rights today. As it stands today it's dry non-irrigated land with poor soil so it fits the criteria without the water rights.

Ed Anthony - Okay. So he doesn't have water rights now? But is he going to transfer water rights later?

Tatiana Burgess - As it is right now, from my understand, he had submitted an application to have those transferred and the Irrigation District was scheduled to get those transferred after the first of the year.

Ed Anthony - So basically it has a water right because he's already gone through the process to get it transferred. Here's my question, you've got to have at least two acres on those pieces of property to put a house, well and septic tank. He's going to lose... it's not a question really. He's going to lose water rights. Our goal has always been to not lose water rights, correct?

Kathy Clarich - Correct.

Ed Anthony - So I'm struggling with this one because he's losing water rights. Does he have no place else to go with this water right or is he just trying to make it so he can farm part of that now?

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Sherwin Koehn - No. We just transferred water rights from some ground that I've never farmed. For some reason this farm has water rights on ground that's too rocky and it's got trees growing on it and I've never farmed it so I just transferred all those water rights. I could definitely go back into Owyhee Irrigation and tell them that I only transfer 9 acres and they would be just fine with that.

Ed Anthony - That makes more sense to me because that gives you a place to put your water and build your house.

Sherwin Koehn - That would not be a problem with me or with Owyhee, as far as I know.

John Faw - How have you managed not to lose the water rights if they're on ground that it's never been applied to?

Sherwin Koehn - Should I answer that question?

Ed Anthony - Yes.

Sherwin Koehn - As far as I can see, we just bought this farm about 3 years ago and I guess it's never come under scrutiny by the Owyhee Irrigation because we have water rights on ground that has trees on it that are 50 feet tall. So I just assume it's never come under scrutiny.

Kathy Clarich - Does anybody have any more questions? If not we will close it to public testimony.

Closed to Public Testimony

Kathy Clarich - What do you guys want to do?

John Faw - If we approve this would we be setting a new precedence where we're diving off irrigated land for residential use?

Teresa Ballard - That's how it feels to me, John. It's the finagling again, it doesn't feel right.

John Faw - (INAUDIBLE) it makes sense. But I've looked at some other properties that were denied that made very similar sense and they were denied.

Clark Forsythe - I have a question in my ignorance of not being a farmer and not being around water rights, if this water is on land that he's not farming now, I'm totally confused. He wants to move it from one parcel he's not farming to another parcel that they're not farming, how's it any different?

Ed Anthony - We farm ground... that water, he may not be using it directly but it may run across that land from another field, possibly. I haven't looked at it to know. Basically it's getting used.

Clark Forsythe - So you're saying somebody other than....

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Ed Anthony - No, he's using it because it's going across his property. It's just the end of the property where he doesn't farm but it's still being irrigated, so it's being used on that piece of property. You don't have to harvest a crop to be irrigating a piece of property.

Clark Forsythe - I agree with that. That why I guess that I'm confused. Why do we care if he moves it up the hill or down the hill? That's where I'm confused.

Ed Anthony - All I was trying to do was make sure that he had enough ground to build on without losing water rights.

Kathy Clarich - I think the big question that came up was he isn't going to be using this property. He's planning on selling it for lots so you don't even know if it would be farmed even after he sold it. I think that was one of the big questions was whether you could take it from actual farm ground and put it on what's going to become residential. I think that's where some of the questions came in in the first place.

Teresa Ballard - But Kathy, doesn't that seem to be backward to what our purposes are?

Kathy Clarich - Yes. Our purpose is no net loss of farm ground. I also think that, in my opinion, they could put a well in and water whatever they want to water up there without having to transfer water rights.

Clark Forsythe - (INAUDIBLE) the decision with the Owyhee Water. I think it happens all the time.

John Faw - I live in a subdivision that has Owyhee water rights as well and I'm under 2 acres and it's old Owyhee water.

Clark Forsythe - I guess that's why I'm asking the question. I am totally confused by what we're trying to do here.

Linda Simmons - If he sells that property and it has that water right on it and they don't know and in 5 year if they don't use it... I mean why are we creating something that isn't there now?

Kathy Clarich - You mean, why are we putting water on that property? Is that what you mean?

Linda Simmons - Yes because it's not there now and it's not used and he has a place to put it. I'm looking at it as if he's selling that, if people come...

(MULTIPLE PEOPLE TALKING AT ONCE)

John Faw - Well I certainly understand why he's trying to move water up there from an economics stand point because those lots are way more valuable with water rights than they are dry. It makes perfect sense to do that but are we setting a precedence here that this board has not done in the past of diving off irrigated ground into building lots?

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Teresa Ballard - I believe we would be, John. I believe we would be.

John Faw - I tried to do the very same thing on a piece of property that I owned and was denied. And there's some other places that I've seen do that and the criteria given was (INAUDIBLE) irrigated land. I would love to these happen but I just don't know if it will fit under the criteria that (INAUDIBLE). That's the kind of ground that needs to have houses put on it. It really is but we're back to this irrigated land stuff and once you put water on land it is no longer low value. It becomes high value and once you create high value land out of it then you can't convert it from ag use for residential use. I don't always agree with it and I certainly don't agree with it this time but is that the rules.

Stephanie Williams - I'm wondering if Eric can pull up ORS 215.263 on your computer and I just want to show them the criteria in 5(b)(D)(F) and the criteria is the real issue is whether or not the non-farm dwelling site are generally unsuitable... this is the criteria. One of the criteria is that the non-farm dwelling sites are generally unsuitable for the production of farm crops and livestock. That is the criteria that you need to address and decide. I know that there are subdivisions that have water rights but were zoned residential. The Forsythe subdivision on (INAUDIBLE) that is zoned residential. Riata Ranchos is zoned residential. This property is not zoned residential. This property is zoned EFU, it will always have that EFU designation so that's the criteria that needs applied.

Kathy Clarich - I'm not sure if I understand totally everything that Stephanie is saying. So supposedly... because there was some comment about people have put in pastures and whatever on this ground that's what he was kind of hoping for, I guess, if I understood him right earlier. If Stephanie is saying that this ground isn't suitable for either of those...

Stephanie Williams - That's not what I'm saying. I'm saying that the criteria that you have address is the non-farm dwelling site. It would generally have to be unsuitable for the production of farm crops and livestock. So if you think that the ground is going to be suitable for crops and livestock you should not approve the non-farm dwelling site or you need to make conditions of approval that make the non-farm dwelling site unsuitable. You know, like they can't have water rights...

Kathy Clarich - Okay.

Eric Evans - And you can see that 'F' that I have there.

Clark Forsythe - So we're saying if it's unsuitable then we should not allow the movement of water. Am I understanding that correctly or am I backwards?

Eric Evans - So the criteria is that they are generally unsuitable for the production of farm crops and livestock.

Clark Forsythe - Which that's what we all agree, that this land is unsuitable?

Eric Evans - You would approve it if you all agree that this land is unsuitable.

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Clark Forsythe - We would not approve it with the water but we would approve it without water, is that correct.

Eric Evans - No, you would not approve it if you said that is was suitable for the production of farm crops and livestock.

Clark Forsythe - Okay but we're talking about water. Is the water our decision or is that somebody else's decision? I guess the water is what seems to be holding the thing up so I'm just trying to get it clear in my own mind what needs to happen for us to, like John said, make it so it's buildable.

Eric Evans - Stephanie can correct me if I'm wrong. The water is... in a way you guys are kind of making it the issue of suitability. So the question is, does that water effect the suitability of that land to produce farm crops and live stock. So if the answer to the commission is, yes that water makes it suitable for the production of farm crops and livestock, that's one way to look at it. But if it doesn't change you or sway you in any way or if you guys put a condition on there that says, hey look you can have 9 acres of water rights and the home is built on a piece of those parcels that does not have water rights and you feel that protects that then you can approve it with those conditions.

Teresa Ballard - Well I would be in favor of approving it without the transfer of the water rights. To me, in my mind, it meets approval of non-suitable for farming without the water rights. Enter the water rights and then in general it would be suitable for ag purposes and not meet our criteria for a split.

Ed Anthony - Okay. You're saying you'll approve it if there's no water right. What if he only transfers 4 acres of water right on each parcel? That gives him 2 1/2 acres to build his house. So you won't approve it that way? Because that other 2 1/2 acre is not suitable.

Rob Kindschy - If I can throw my 2 cents in here. The way it reads, is if the parcels and the non-farm dwellings are generally unsuitable, so it's just for the dwellings. So it sounds like we can actually transfer the water up there as long as the dwellings themselves are not going to sit on that and that ground itself will be fine for the dwelling.

Teresa Ballard - That's (INAUDIBLE). I don't agree with you.

Kathy Clarich - The whole thing is the parcel, not just where you want to build a house. If he divides is off into 2 parcels the whole 7 1/2 acres, or whatever it's going to be for each one, is a parcel. So you have to decide if that whole parcel is suitable for a non-farm dwelling and that's why I'm kind of with Teresa. As long as there is no water on it, yes, I do say the whole parcel would be suitable for a non-farm dwelling.

Rob Kindschy - I was just going to say, in the past we have past some of these that have the split off parcels that have irrigated ground as long as there was enough ground to put a house on it. Basically that's what he's trying to create here.

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Kathy Clarich - Those are ones that already had the water.

Eric Evans - If I can say something about that and I have a pretty short term of experience with these. When it talks about this 'E' that's right here, 'the parcels for the nonfarm dwellings do not have established water rights for irrigation' that's for the partitioning of a piece property, splitting it up into multiple parcels. That's where the water rights come in in the ORS. Now we have approved a nonfarm dwelling up off of Peterson Road. It was already a 3 acre piece of property and it had water rights. I don't know for sure if maybe I'm incorrect, Rob, but in my experience it's always been just the nonfarm dwelling that doesn't have this 'E' as part of the criteria. So the criteria about having water rights really is about the partitioning of a piece of property and creating new parcels rather than just a nonfarm dwelling on an existing parcel.

Kathy Clarich - Is there any more discussion? Okay, whoever is going to make the motion go ahead.

Teresa Ballard made a motion to deny the Conditional Use Permit for one Non-Farm Dwelling.

Eric Evans - I would, as part of this discussion at least, if there is a second and you guys enter into discussion, for us staff, we would have to have information from the Planning Commission for the denial, what criteria are we denying it under.

Kathy Clarich - Okay motion fails for lack of a second. Do I have another motion?

John Faw made a motion to approve two nonfarm partition with one caveat that not a full water right for all acreage be provided and transferred. Ed Anthony seconded the motion.

Kathy Clarich - Okay, so are you trying to give me a condition on it then?

John Faw - Yes, with the one condition that it does not get full water rights so there is still dry land for the residence.

Ed Anthony - I would recommend that he can only transfer 4 acres of water on each piece. That would give him 3 acres of ground to put is dwellings on.

Eric Evans - Did you get that Kathy?

Kathy Clarich - Yes. We have a motion and a second but before we vote on it can we go back and do the motion for the staff report and findings of facts?

Ed Anthony made a motion to approve the staff report and findings of facts with the addendum for the road grade. John Faw seconded the motion which was unanimously approved by the Commissioners present.

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Kathy Clarich - We have 4 conditions already; adequate access shall be secured for each individual partition, adequate fire breaks shall be constructed and maintained to minimize danger from potential wild fire, the right to transfer 4 acres of water rights and I think we had another...

Tatiana Burgess- We had a condition for the easements, that each would be (INAUDIBLE) from Powell Road there was really no need for any kind of easement.

Kathy Clarich - Do we need to have something about meeting the Fire Districts requirements because we don't know where they're going to put a house on it?

Tatiana Burgess - Yes we can definitely include that.

Kathy Clarich - Another one was on the water rights if they're going to transfer it they have to have the separate... what's it called.

Ed Anthony - Separate head gates.

Eric Evans - I would also propose to you guys, now that you've asked about it, we also need a condition in there about paying back taxes. Right?

Tatiana Burgess - No. I don't think so, I'm sorry, I don't have the file in front of me. But I think when I talked to Kathy Pozzi at the assessor's office this actually has been assessed at the real market value.

Eric Evans - It's part of the nonfarm partition/nonfarm dwelling criteria for this. Anytime we do it then they have to pay the back taxes but I do believe that Tatiana did look into that... I think that she's correct so maybe she's right, that's why we didn't put that as a condition.

Tatiana Burgess -That's why I did not put it in. It wasn't the case here as it had been already assessed at the real market value.

Kathy Clarich - So you're saying the whole parcel, not just these 2 lots, have been assessed at the real market value.

Tatiana Burgess - Correct and again, I apologize I don't have the folder, but that's what I recall from the conversation with Kathy Pozzi. I can definitely double check on that to make sure that that is the case.

Kathy Clarich - That would be great.

John Faw - Would that make any difference anyway because we're not doing a zone change?

Eric Evans - It's not about a zone change. It's actually about changing the use of it from EFU to residential type use but it's actually in the statute that you have to pay... even without a condition I have to require it's just usually nice to have it in there to make sure the applicant knows about it.

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Kathy Clarich - Under the staff report it's zoning is Exclusive Farm Use C-A1 and Exclusive Range Use C-A2, is what you've got on the staff report.

Eric Evans - None of that is changing. None of it ever changes in these.

Tatiana Burgess - For the assessment purposes they have a different tax bracket, whether or not it has the ag exemption on it or not, which in this case it would lose the ag exemption because it will not be used for farming anymore. They would have to pay back the (INAUDIBLE) but I do not believe this is applicable in this case since they haven't had that ag exemption on the lot to begin with.

Eric Evans - The concept behind this is that you have this farm deferral, this lower amount you pay for farm land, that is a benefit you get that you give up in order to have this nonfarm dwelling/nonfarm partition.

Kathy Clarich - So are there any other conditions that need to be put on this?

Eric Evans - If I could... can you go through all those too, just to make sure that we have all those correct?

Kathy Clarich - Okay, well the 4 that you have, I'll leave those. The 5th one I put was the water rights can transfer 4 acres maximum, 6th is a separate measuring device and 7 was meeting the fire code requirements. Okay, is the motion still going to be the same or do you want to change it at all.

Eric Evans - If you're going to ask me that question... is we actually need 2 things approved here, the nonfarm partition and then allowing the nonfarm dwellings.

Ed Anthony made a motion to approve two nonfarm partition with the conditions agreed upon by commissioners. Rob Kindschy seconded the motion. Aye: John Faw, Linda Simmons, Clark Forsythe, Ed Anthony, Rob Kindschy. Nay - Teresa Ballard.

Motion carried.

Ed Anthony made a motion to approve two nonfarm dwellings. John Faw seconded the motion. Aye: John Faw, Linda Simmons, Clark Forsythe, Ed Anthony, Rob Kindschy. Nay - Teresa Ballard.

Motion carried.

New Business

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Applicant: Mason and Abby Michaelis
1433 Highway 201
Adrian, Oregon 97901

Owner of Record: John and Lisa Davis
1433 Highway 201
Adrian, Oregon 97901

Representative:

Conditional Use Permit for one non-farm dwellings and one non-farm partitions. Planning Department file number 2020-8-023.

Kathy Clarich - Now is the time to hear the request for conditional use permit for one nonfarm dwelling and one nonfarm partition in exclusive farm use zone for applicants Mason and Abby Michaelis. The Malheur County Planning Department file number 2020-08-023.

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 Chair. Testimony in question should not be directed to staff or directly to witnesses.
3. Do any members of the County Planning Commission need to abstain?
 - a. There are no abstentions from the members of the County Planning Commission.
4. Do any members of the County Planning Commission have any conflicts to disclose?
 - a. None.
5. Do any members of the County Planning Commission have any bias to disclose?
 - a. None.
6. Do any members of the County Planning Commission have any ex parte communication, including any site visits, to disclose?
 - a. Teresa Ballard owns a farm near this property. John Faw has been out to the property.
7. Does anyone object to any members of the Malheur County Planning Commission hearing this application?
 - a. There are no objections.
8. Does anyone challenge the Malheur County Planning Commission's 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 MCC 6-6-7 General Criteria to Evaluate Suitability; MCC 6-6-8-1 Specific Conditional Use Criteria for Non Resource Dwellings in EFU, ERU or EFFU Zones; MCC 6-6-8-2 Specific Conditional Use Criteria Non Resource Partitions

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in EFU, ERU or EFFU Zones; MCC 6-3A-3 Allowance of Certain Uses; OAR 660-033-130(4)(a)(b) 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 or 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.

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

Tatiana Burgess - This is Planning Department file number 2020-08-023, an application for a nonfarm partition and one nonfarm dwelling. The applicants are Mason and Abby Michaelis, at 1433 Highway 201, Adrian, Oregon. The owner of record is John and Lisa Davis at 1433 Highway 201 in Adrian. The conditional use application is for a proposed 2 acre nonfarm partition for one potential home site. The property is identified as Tax Lot 500 on Assessors Map 22S46E23, Malheur County Reference 16036. The property is accessed by wood bridge... south of the intersection of Wood Bridge Road and Succor Creek Highway. It is zoned Exclusive Farm Use. The current mapped size of the property is 44.5 acres. The current outline of the property is mapped erroneously, it does not reflect the deeded amount of acreage for each property. So pertinent to tonight's approval, a property line adjustment will be completed between the subject parcel and the Tax Lot #3200 directly south of this property to accurately reflect the current deed. The property is entirely surrounded by farm land. A DEQ sanitation system would be required. The parcel is within the Adrian Rural Fire Protection District. Currently, there are water rights on the subject property, however, there are no water rights on the proposed 2 acre partition site. Most of the property is covered by soils class 8 and class 4 and there is just a very small portion of class 1 soil on the northeast part of the parent parcel, however, the proposed partition site is completely covered by class 8 soil. Currently, there's only been 1 other home site developed on the property; per assessor record that home had been built in 1984. There is no other known zoning history.

Applicant Testimony

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Abby Michaelis - We would just like to split off 2 acres for a single family home. There are no water rights and it's all class 8 soil. The proposed lot has a frontal access to Highway 201 and direct access as well. It will not impede or affect any surrounding farms or farming practices. No water rights will be disturbed. The proposed lot will have its own well and septic tank for the house.

Kathy Clarich - Are you... is this an entrance also to another house or is this a separate entrance to this lot.

Abby Michaelis - It's the same entrance.

Kathy Clarich - Does anybody have any questions for her?

Eric Evans - If there's any confusion on this Tax Lot line and the parcel they're taking off and any conditions that you guys want to apply there will be a time period after the approval and the property line adjustment that it won't quite look the way that it's presented until the property line adjustment is done. I'm not sure if that's a condition, is it Tatiana? Maybe you guys may want to put a condition that the property line adjustment is done prior to final approval.

Does anybody have any questions? Did you guys understand that? If you guys can see what I have presented up there, there is one that has this wavy line to and that is actually current the Tax Lot line so on our Tax Maps that what shows up that that's the property line. This was presented to us by Derrick McCroala and this is his interpretation of what the deed actually says. So this would be his professional opinion on it, so his opinion is the actual deeded line for the parcel is the green portion of that and not that wavy line that goes in the middle of that. The whole green piece is what we're partitioning here. That's his interpretation as he reads the deeds. Both of these parcels, if you look at the parcel that we are partitioning and the other one, it's all owned in family. I believe, Abby can correct me if I'm wrong, it's aunt and uncle that own the larger piece. They're already going to, once this is all said and done, go through the property line adjustment process to get it to where it is right now because the way that they're adjusting it is how it's being used by both families. Technically tonight your approval is going to be to partition the green area within... that within the pink line. So the blue line is the partition, the pink line is part of what is the property now and everything outside of that including the flag lot part of that is going to have to be adjusted as part of the property line adjustment. I just wanted to make full disclosure that's what we're going to do.

Kathy Clarich - So what you're wanting to do is just what's inside the blue?

Eric Evans - Right. When you approve this, it's going to be very easy as part of the record, we know what is happening here. The way that it's presented in the Tax Lot that is showing up on my screen right now, in order to get there we have one more thing to do. They're doing it as a flag lot, it's going to have direct access to Highway 201 and so that's one of the reason we don't have easements or anything. We wouldn't be sad if you guys made it a condition of approval that they have to do this property line adjustment because that insures that they get exactly what's being presented to the commission.

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John Faw - I understand that they're going to access this new parcel under the same drive as the existing residence, is what I thought I heard.

Tatiana Burgess - There's going to be one common access point to satisfy the access to both dwellings. So I actually did list it as a condition of approval that an easement does have to be secured for the access road because it's shared by two houses.

John Faw - Not only the easement but you better put road maintenance.

Tatiana Burgess - It is included, it's condition number 4.

Proponent Testimony - None.

Opponent Testimony - None.

Closed to Public Record

Kathy Clarich - Is there any discussion you want to have on this?

John Faw - The original residence that's on there was placed there in '84 or '85? As a nonfarm partition/nonfarm dwelling correct?

Tatiana Burgess - That is currently listed as a family farm dwelling. I don't know whatever criteria of approval they had if there was any I could not identify any records from a zoning stand point. I just (INAUDIBLE) assessors records.

John Faw - My only question is was that one put on after LCDC came into being can we do this?

Eric Evans - The criteria... so the parent parcel has to have been created before '91 or '93. So the dates that we're talking about here when it comes to these nonfarm partitions the earliest one is the early to mid 90's and then there's one about 2001. I can go get my cheat sheet if you'd like.

John Faw - No that's okay. As long as this one didn't trigger that and fall under that, that was my fear.

Eric Evans - Obviously I don't have all the experience in the world for these nonfarm dwellings/nonfarm partitions but I'm not sure that they... did they have these back in the 80's? Was it part of the original...

Kathy Clarich - I have a question then if you're going to do that then the lot line adjustment that's being done... (INAUDIBLE) a lot line adjustment in order to make a partition that you can put a house on. I'm not explaining it very well but....

Eric Evans - My argument would be that they could do this without the property line adjustment. They might have to modify it a little bit. They could do this. It's all class 8 soil. I'm telling you this is the land that we want to qualify for this in every way we can, in my opinion. They could

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modify it just a tiny bit and not get exactly what they want and we would approve it in a heartbeat in my opinion. So this is just a little bit different and they're going to do a tiny property line adjustment to adjust it to what the property is as it's being used right now.

Tatiana Burgess - Kathy, to your point when you say that the property line adjustment to create the parcel to put a house, it says that it shouldn't facilitate that and as it is right now they would still qualify to put that house based on the soil condition. The property line adjustment is not going to impact that qualification.

Kathy Clarich - Quite frankly this is one that I don't really have a problem with it because the soil isn't good for farming and it has no water rights to is and I assume that they're aware that this is the only partition that they'll get to have off of it.

Eric Evans - I will make one more comment. What you're talking about with property line adjustments is when the property line adjustment changes the creation date of that parcel and the way that they're proposing this is that the partition is going to happen prior to the property line adjustment and therefore does not have any influence on the creation date and therefore the criteria.

Ed Anthony 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.

Ed Anthony made a motion to approve a nonfarm partition with the conditions agreed upon by commissioners. Clark Forsythe seconded the motion which was unanimously approved by the Commissioners present.

Ed Anthony made a motion to approve a nonfarm dwelling on the partition. Linda Simmons seconded the motion which was unanimously approved by the Commissioners present.

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 Clarich Date: 2-1-2021