

## **Malheur County Planning Commission**

The Malheur County Planning Commission Meeting was held via Zoom online, April 23, 2020, at 7:30 P.M. Kathy Clarich called the meeting to order.

### **MALHEUR COUNTY COMMISSION MEMBERS PRESENT:**

Kathy Clarich  
Teresa Ballard  
Chad Gerulf  
Rob Kindschy  
John Faw  
Robert Quick  
Linda Simmons

### **PLANNING DEPARTMENT STAFF MEMBERS:**

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

### **OLD BUSINESS:**

Kathy Clarich – The first thing on our agenda is the approval of the March minutes.

Approval of March 2020 minutes:

*John Faw made a motion to accept the March 2020 minutes with corrections to page 5 and page 9. Linda Simmons seconded the motion which was approved unanimously by the Commissioners present.*

### **NEW BUSINESS:**

Applicant: Andy & Joan Bentz  
2092 Westridge Drive  
Ontario, Oregon 97914

Representative: Andy Bentz

***Conditional Use Permit for One Non-Farm Dwelling. Planning Department File No. 2020-02-015.***

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Kathy Clarich – Now is the time to hear the request for a conditional use permit for one non-farm dwelling in an Exclusive Farm Use zone for applicant Andy Bentz; Planning Department file 2020-02-015.

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. There are no conflicts to disclose by any members of the County Planning Commission.
5. Do any members of the County Planning Commission have any bias to disclose?
  - a. There is no bias from any members of the County Planning Commission.
6. Do any members of the County Planning Commission have any ex parte communication, including any site visits, to disclose?
  - a. Kathy Clarich, Theresa Ballard and John Faw all made site-visits.
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 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 6-6-7, 6-6-8-1, 6-3A-3; OAR 660-033-130-(4)(a)(D).

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.

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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.

Order of proceedings:

1. The applicant will be allocated up to 20 minutes for initial application presentation. The applicant may also present up to 10 minutes for final rebuttal.
2. All others wishing to testify will be given 5 minutes each.
3. The staff report will be read first for the county, applicant (20 minutes), testimony in favor or proponent (5 minutes each), testimony in opposition or opponent (5 minutes each), staff comments (if any), applicant or proponent rebuttal (10 minutes) and then closed to public hearing. No public testimony can be heard after this point.
4. If a continuance is requested or a request to leave the record open it must be granted.

At this point in time, please state your name and address for the record Mr. Bentz.

Andy Bentz: My name is Andy Bentz, application for Andrew and Joan Bentz. Our current address is 2092 Westridge Drive, Ontario, Oregon.

Kathy Clarich - Please tell us what your plans are for this application.

Andy Bentz: We are asking for a conditional use permit again. It was issued once before to the previous owners and it expired after their untimely death. We purchased this last summer and we're putting it back into somewhat of production. There is a shop on the place with an existing domestic well. We are thinking of putting our primary residence on it, also, and living there; that's what our plan is.

**Preliminary Staff Report: Read by Management Planning Assistant, Tatiana Burgess.**

Tatiana Burgess - As Mr. Bentz was telling us earlier, this is an application for a conditional use permit for a non-farm dwelling for a piece of property off of Vista Drive, a total of 14.74 acres. This is on exclusive farm use and currently the property is vacant. Like he stated, there is a shop that is on the site where the future dwelling is being proposed to be built. The shop currently has a small septic system for it. Currently, there is about 10 acres of irrigated land on the property and that is being planned to maintain and irrigate it. They are proposing to continue growing some hay on that parcel. The zoning history on this property: this was in ownership of Dana Tuckness with several parcels, and all of the properties have gone through a series of property line adjustments and as Mr. Bentz had stated, this particular property had been granted a CUP for a non-farm dwelling back in 2004. That permit had never been fulfilled and it expired, it was granted an extension in 2008 but that had expired as well without development being completed. At this point, Mr. Bentz is proposing to build a non-farm dwelling on it. It is within the Ontario Rural Fire Protection District and within Ontario Rural Road District.

Eric Evans - It is not a part of the staff report but if you look at the letter from the Ontario Fire District, he does have a request as a part of that letter to bring that road up to code. The staff would propose that we add that as a condition.

**Applicant Testimony:**

Kathy Clarich – Did Mr. Bentz see the letter from the Ontario Fire Department?

Andy Bentz - Madam Chair, yes I did see that. I have raised and widened the road and there will also be the turn-outs. The Chief never did look at the property; he just looked at it from Google Earth which is several years old. The road is substantially different than it was last summer but I've been rebuilding the base and it will be... there are over 100,000 lb low-boys going in and out of that. He and I discussed that and I thought his fire trucks wouldn't have a big problem but I will go ahead and add the turn outs and I will make it two lanes wide in certain areas to fall within those standards.

Kathy Clarich - Okay and your grade is no longer steeper?

Andy Bentz - Excuse me?

Kathy Clarich - It says that the grade cannot be steeper than 10%.

Linda Simmons - Will he send us an amended letter stating that it's been met or does that simply just have to be a condition?

Eric Evans - The condition of approval would be that we would require that prior to issuing any kind of permit.

Linda Simmons - Okay, I thought that's what you were saying but I just wanted to make sure.

Andy Bentz - Madam Chair, this is Andy Bentz. With the percentage of grade, I'm a little bit concerned about the establishment of standards when I'm already much less of a grade than many driveways that I can think of, even within my own study area. I still have some concerns and discussions with the County on that. I'm not sure what the grade is right now on the final part of that driveway. Again, as I said, 12 months a year we are able to move in very heavy lowboys in and out of there and so I don't really know how to approach or address this particular issue. I would certainly look for guidance or clarification.

Kathy Clarich - Well it's part of the Oregon Fire Code, it's a State Code not a County...

Andy Bentz - Actually it's a National Fire Standard for the Fire Chief's Association, I'm not sure if all that Code that he cited is actually Oregon, I do know it's National.

Kathy Clarich - I was just going to say, we've had this discussion a few years back and Oregon had adopted the National Fire Code is what I understood but I could be wrong. You'll need to discuss that with them and if they want to change it, they'll let the County know.

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John Faw - Mr. Bentz, this is John Faw. The driveway in, is all on an easement? I didn't research it to make sure that you had good legal access into that because I've had to fix some of these in the past and they can be an issue.

Andy Bentz - They certainly can. Down to the corner of that property, that is an easement, on the other piece of the original Tuckness' property. Gerry Baker owns that particular piece of the hillside as well as the land to the south and that is a non-revocable easement through there. Gerry and I are both good with it; it's legally sound and good in place.

John Faw - When I drove down it the other day it looked like it was probably that way but I just hadn't researched it to verify for myself.

Andy Bentz - That's absolutely legitimate. That's something that before we could even buy the place, we had to make sure that was not going to be a problem, which you've unfortunately had to deal with many times.

John Faw - Thank you. I was looking at that and I find that hard to believe that the 10% grade is going to be an issue for you.

Andy Bentz - Well it's not. I haven't put any sites on it but that's pretty close. It was steeper than that when we obtained the property. It was too steep for the use I needed so it has been built up; it's twice as wide going up that hill as it was before. It'd been a pretty good challenge in the snow when we found it. The only problem I have is I have to build it up from the bottom because at the top, all that power on to that property is underground power, so while I have it located, I don't want to dig up the power, so there is only a certain amount of depth I can go and I have already done that at the top end so any other change will have to be built up down at the bottom. I certainly don't want to relocate the underground power.

Tatiana Burgess - I believe everybody can see my screen right now and these are pictures of the Bentz property that were submitted to our office by Mr. Bentz.

**No Proponent Testimony.**

**No Opponent Testimony.**

**Closed to Public Testimony.**

John Faw - When I was visiting this lot I was thinking, what a beautiful place to put a house, why not? We're not taking any land out of production, it's already got the shop, it's been approved once in the past so I can't see anything wrong with this one, other than we're putting another house out in the middle of our farm ground. This is the kind of places we need to be putting them.

Theresa Ballard - I agree that it is a good proposal. I think that we do need to have the grade clarified as a part of the approval.

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Chad Gerulf - I think it's a great place for a house and I don't see any problems at all with it as long as the road will facilitate fire trucks, which I have no doubt it will do that, especially if Mr. Bentz is running his own big/heavy equipment out of there.

John Faw - It certainly looks like he's hauling some heavy stuff in and out of there because when I was up there he was on a pretty good sized back-hoe digging holes and it didn't get there by itself.

Chad Gerulf – He did a lot of work around there with the gravel, it looks good, I have no doubt it's in good shape.

Eric Evans - If you guys want, you have all of our conditions that we have proposed in our staff report but I would be willing to, if you guys wanted to have a discussion of what you want the conditions to say, the staff would be able to write that up, the verbiage that you want to use.

Kathy Clarich - I just think we need to have something in there that he will comply with the Ontario Fire District and the road construction, whatever they agree too.

John Faw - Will that not need to be done anyway to get a building permit issued?

Kathy Clarich - I would think so.

Eric Evans - Yes, technically yes.

Kathy Clarich - Even if we don't put it as a condition it would still have to be?

Eric Evans - I think having a condition behind it actually puts a little more weight behind it.

Kathy Clarich - I would prefer to have a condition then.

(MULTIPLE COMMISSION MEMBERS AGREED)

Kathy Clarich - Doesn't the title for the property already have this statement in it or do we have to do it again?

Eric Evans - They probably when they partitioned this piece off the property they may have added that, it's just kind of a blanket statement that we write into all non-farm dwelling applications as a condition of approval. So if it's already there then that condition is met.

Tatiana Burgess - We know that it has been permanently disqualified from farm use so that has been done for the previous conditional use permit.

Kathy Clarich - Any other questions? If not, I'll entertain a motion.

*Robert Quick made a motion to accept the staff report and findings of facts with the addendum for the road grade. Chad Gerulf seconded the motion which was unanimously approved by the Commissioners present.*

*John Faw made a motion to approve the Conditional Use Permit for one Non-Farm Dwelling. Linda Simmons seconded the motion which was unanimously approved by the Commissioners present.*

**NEW BUSINESS:**

Applicant: Bryon & Rebecca Clark  
44025 Heppner Spray Highway  
Spray, Oregon 97874

Representative: Derrick McKrola

***Conditional Use Permit for a Non-Farm Dwelling and a Non-Farm Partition. Planning Department File No. 2020-02-018.***

Kathy Clarich – Now is the time to hear the request for a conditional use permit for one non-farm dwelling and one non-farm partition in an Exclusive Farm Use zone for applicant Bryon Clark; Planning Department file 2020-02-018.

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. There are no conflicts to disclose by any members of the County Planning Commission.
5. Do any members of the County Planning Commission have any bias to disclose?
  - a. There is no bias from any members of the County Planning Commission.
6. Do any members of the County Planning Commission have any ex parte communication, including any site visits, to disclose?
  - a. Kathy Clarich, Theresa Ballard and John Faw all made site-visits.
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 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, 6-6-8-1, 6-6-8-2, 6-3A-3; OAR 660-033-130-(4)(a)(D).

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.

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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.

Order of proceedings: Same as previous application.

**Applicant Testimony**

Kathy Clarich – Please state your names for the record and tell me what your plans are.

Derrick McKrola - Derrick McKrola, Land Surveyor, spokesman for applicants Bryon and Becky Clark, I am here on their behalf. My address is 3811 Birch Road, Vale, Oregon 97918.

The original parent union of land is 152 acres of farm and 2 residences there, one to the northeast and the other towards the northwest. The tax assessor's office calls 2051 as the residence address, the original one, I guess in the 1940's and then there is a new one that was built in about 1995. The applicant's desire is to separate that away from the farm, about 5 acres, the other residence will stay with the farm. They waive their right for trying to get two parcels, they don't care about that, they just want to get the one parcel created and sell that to the current tenant that lives there, Chancey Child. Everything there is existing, there is nothing new to propose as far as improvements go. No water rights are going to be retained with that new parcel that is created, the 5 acres.

Kathy Clarich - So you said they aren't retaining the water rights or they are?

Derrick McKrola - They are not retaining any water rights with the separated 5 acres.



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As pulled up there, as you can see, there is a pivot that shows where the water is going, up there to the northwest, near the intersection of Road E is where that house is going to be partitioned off (proposed). That's our request, is to separate that from the farm and liquidate it.

**Preliminary Staff Report: Read by Planning Management Assistant, Tatiana Burgess.**

Tatiana Burgess - As Mr. McKrola stated, the proposed partition is in the northwestern corner of the parent parcel, it's about 5 acres. That proposed partition sits on soils of mostly class 4 and class 3, that ground is not currently being farmed. The existing farm is the one that will retain the water rights and it seems like the proposed line will go along the water rights, from the map from the irrigation district. The proposed partition is currently developed, dwelling wise. It has access off of 6<sup>th</sup> Avenue, it has a current driveway. The zoning history on this property, there's been a solar array that has been placed back in 2014 on the proposed partition site. That's about it. I think Mr. McKrola covered everything.

Linda Simmons - The only question that I have is in the letter from the Vale Irrigation and has to do with the easement, which they had to have an agreement, is that done?

Derrick McKrola - I have not seen that letter of an easement. Presuming that there is an easement that runs to the south of South Road E, that's improved there, as it runs south of 6<sup>th</sup> Avenue West. I presume that there is, in the very least, descriptive right-of-way, irrigation right-of-way, that is needed to be there or to retain for water right purposes.

Robert Quick - You do not have a copy of the letter from the Irrigation District?

Derrick McKrola - I don't have a copy of the letter but I'm sure if there is something there that needs to be... if there needs to be something on the face of that plat that will be shown on there as standard practice.

Robert Quick - It states that, 'if the water rights are not going to go with it, no requirement will be needed'. But there is a pipeline it says it runs parallel and Mr. Clark and Mr. Child will have to sign off on that partition.

Derrick McKrola - It runs parallel with 6<sup>th</sup> Avenue?

Robert Quick - Yes.

Derrick McKrola - Yeah, not a problem.

Robert Quick - That's also stated in the findings of facts as presented by the staff.

Derrick McKrola - We can include a statement of the plat. I'll have something from the Vale Irrigation District before they sign off on the partition, I guess.

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Tatiana Burgess - This is included in the staff report and it is condition number 4, that we have pointed out by the Irrigation District. It has already been included in our staff report it just means that they have to go to the office and get that signed off on, it's pretty straight forward.

Derrick McKrola - Yeah, that shouldn't be a problem.

**No Proponent Testimony**

**No Opponent Testimony**

**Closed to Public Testimony**

Linda Simmons - I'm for it.

John Faw - I don't see any real issues with it. It's already existing, it's not owner occupied so why not.

Robert Quick - I confer.

*Robert Quick made a motion to accept the staff report and findings of facts. Chad Gerulf seconded the motion which was unanimously approved by the Commissioners present.*

*Linda Simmons made a motion to approve the Conditional Use Permit for one Non-Farm Dwelling. John Faw seconded the motion which was unanimously approved by the Commissioners present.*

*John Faw made a motion to approve the Conditional Use Permit for one Non-Farm Partition. Robert Quick 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: \_\_\_\_\_ Date: \_\_\_\_\_