

STAFF REPORT

Planning Department File No. 2020-03-011

APPLICATION FOR Appeal of the Planning Director's Denial of a Deferred Replacement Dwelling

Planning Commission Meeting Date: May 28, 2020

1. **APPELLANT:** Jeffrey Downie
1764 Hwy 201
Adrian, OR 97901
2. **PROPOSED ACTION:** Appeal of a March 16, 2020 decision by the Planning Director, denying an application for a Deferred Replacement Dwelling pursuant to ORS 215.283.
3. **PROPERTY IDENTIFICATION:** Tax Lot 801, T22S, R46E, Sec. 03, Map 22S4603 (formerly known as Map 22S46E03, Tax lot 800), Malheur County Reference Number 20789 (formerly 10890).
4. **ZONING:** CA-1 Exclusive Farm Use
5. **PARCEL SIZE:** The parcel is 6.27 acres.
6. **PARCEL USE:** Farm/Residential.
7. **SURROUNDING USE:** To the east is the Snake River; To the north is a non-resource dwelling; To the south and east is farm use.
8. **ACCESS:** Via Hwy 201.
9. **SANITATION REQUIREMENTS:** Any replacement dwelling will be subject to Malheur County Environmental Health guidelines.
10. **FIRE PROTECTION:** The parcel is within the Adrian Rural Fire District.
11. **NATURAL HAZARDS:** Homesite is not in the 100-year floodplain, but part of the parcel/parcels is.
12. **WATER RIGHTS:** Some of the property has Snake River water rights. Well in use for residence.
13. **ZONING HISTORY:** This parcel has historically been in residential and agricultural use.

I. SUMMARY & BACKGROUND:

On March 12, 2020, a notarized application for a Deferred Replacement Dwelling was submitted to the Malheur County Planning & Zoning Department. The application was submitted in response to a letter dated March 6, 2020 (see Exhibit F) to Mr. & Mrs. Downie. Currently, the parcel has a home which was built in 1978. The request is to replace a currently non-existent home on the property as a second dwelling. It is expected that a property line adjustment between two adjacent properties would then make the second parcel buildable and the site of the second dwelling.

It is the applicant's burden to prove that the non-existent second home meets all requirements of Oregon Revised Statute (ORS) 215.283 for a replacement dwelling. In part, ORS 215.283 states:

- (1) A lawfully established dwelling may be altered, restored or replaced under 215.283(1)(p) if the county determines that:*
- (a) The dwelling to be altered, restored, or replaced has, or formerly had:*
 - (A) Intact exterior walls and roof structure;*
 - (B) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;*
 - (C) Interior wiring for interior lights; and*
 - (D) A heating system; and*
 - (b) (A) If the dwelling was removed destroyed or demolished:*
 - (i) The dwelling's tax lot does not have a lien for delinquent ad valorem taxes; and*
 - (ii) Any removal, destruction or demolition occurred on or after January 1, 1973;*
 - (B) If the dwelling is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, the dwelling's tax lot does not have a lien for delinquent ad valorem taxes; or*
 - (C) A dwelling not described in subparagraph (A) or (B) of this paragraph was assessed as a dwelling for the purposes of ad valorem taxation:*
 - (i) For the previous five property tax years; or*
 - (ii) From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010.*

In addition to the application, 4 written statements from the applicants and two neighbors, were submitted to my office on February 24, 2020 (see Exhibits B, C, D, & E). In short, these notarized statements were intended to satisfy the requirements of ORS 215.283 above, and show the home "has or formerly had" a roof and walls, indoor plumbing, interior wiring, and a heating system.

On March 20, 2020, the Malheur County Planning Department received a timely Notice of Appeal from Jeffrey Downie (attached). An appeal of the Planning Director's decision is heard in front of the Planning Commission. This will be a de novo hearing.

II. PREVIOUS ACTION:

No previous actions noted on this property.

III. PROPOSED FINDINGS OF FACT:

(2) A lawfully established dwelling may be altered, restored or replaced under 215.283(1)(p) if the county determines that:

(c) The dwelling to be altered, restored, or replaced has, or formerly had:

(E) Intact exterior walls and roof structure;

(F) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(G) Interior wiring for interior lights; and

(H) A heating system; and

PROPOSED FINDING: A review of the Assessor's Office records, going back to 1963 (see Exhibit A), provided no taxes were paid for any 'Improvements' on this property up until the current dwelling was constructed in 1978. 'Improvements' would include dwellings and any other structures on the property.

The applicant submitted written statements (see Exhibits B, C, D, & E) that the second home meets the requirements of ORS 215.283. These statements by themselves are not substantial evidence that requirements of the statute are met. No other evidence has been entered into the record which would prove that a dwelling existed on the property to meet the requirements of ORS 215.283 for a deferred replacement dwelling.

It can be assumed that in 1978, when the current home was constructed by Keith Smith, it was done as a replacement dwelling. This would therefore make the second non-existent home an illegal dwelling and would therefore not meet the requirements of ORS 215.283.

These criteria have not been met.

(d) (A) If the dwelling was removed destroyed or demolished:

(iii) The dwelling's tax lot does not have a lien for delinquent ad valorem taxes; and

(iv) Any removal, destruction or demolition occurred on or after January 1, 1973;

(B) If the dwelling is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, the dwelling's tax lot does not have a lien for delinquent ad valorem taxes; or

PROPOSED FINDING: The dwelling in question does not currently exist. These criteria do not apply.

(C) A dwelling not described in subparagraph (A) or (B) of this paragraph was

assessed as a dwelling for the purposes of ad valorem taxation:

(i) For the previous five property tax years; or

(ii) From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010

PROPOSED FINDING: A review of the Assessor’s Office records, going back to 1963 (see Exhibit A), provided no taxes were paid for any ‘Improvements’ on this property up until the current dwelling was constructed in 1978. ‘Improvements’ would include dwellings and any other structures on the property. These criteria have not been met.

IV. STAFF RECOMMENDATION:

The record does not contain substantial evidence to support the claim that the parcel has or formerly had a lawfully established second dwelling containing all the elements of ORS 215.283(1)(p). The application for a deferred replacement dwelling should be denied.

V. EXHIBITS:

- A. Tax lot cards (1963-1975)
- B. Affidavit from Jeffrey B. Downie
- C. Affidavit from Amber L. W. Downie
- D. Affidavit from Keith Spiers
- E. Affidavit from Marsh Spiers
- F. March 6, 2020 letter from Planning Director
- G. Notice of Appeal of Land Use Decision (2020-03-011)
- H. Affidavit #2 from Jeffrey B. Downie