

Malheur County Planning Commission

The Malheur County Planning Commission Meeting was held via GoToMeeting online, May 28, 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
Robert Quick
Linda Simmons
Clark Forsyth
John Faw

PLANNING DEPARTMENT STAFF MEMBERS:

Eric Evans, Planning Director
Tatiana Burgess, Planning Management Assistant

OLD BUSINESS:

Kathy Clarich – The first thing on our agenda is the approval of the April 2020 minutes.

Approval of April 2020 minutes:

Robert Quick made a motion to accept the April 2020 minutes with correction to meeting website used. Chad Gerulf seconded the motion which was approved by unanimously approved by the Commissioners present.

NEW BUSINESS:

Applicant: Lisa Kittel & Ryan Thomas
1751 Syringa Road
Adrian, Oregon 97901

Representative: Lisa Kittel & Ryan Thomas

Conditional Use Permit for Commercial Activity in Conjunction with Farm Use. Planning Department File No. 2020-04-14.

Malheur County Planning Commission
May 28, 2020

Kathy Clarich – Now is the time to hear the request for a conditional use permit for commercial activity in conjunction with farm use in an exclusive farm use zone for applicants Lisa Kittel and Ryan Thomas; Planning Department file 2020-04-14.

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. There was no ex parte communication or site visits by any members of the County Planning Commission.
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 and 6-3A-3(J).

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.

Malheur County Planning Commission
May 28, 2020

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.

At this point in time, please state your name and address for the record, Lisa or Ryan.

Ryan Thomas and Lisa Kittel are both on the phone line.

Lisa Kittel: My address is 1751 Syringa Road, Adrian, Oregon.

Ryan Thomas: My address is 1751 Syringa Road, Adrian, Oregon.

Kathy Clarich: Tatiana will you read the staff report, please?

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

Tatiana Burgess: This is a proposal for a mare motel. It is being proposed by Lisa Kittel and Ryan Thomas. They are proposing to build a structure of about 25' x 130' that will have 11 horses there. This property is off of Syringa Road in Adrian. In order to get to the property past Redtop Road and Syringa Rd, there is an easement. The property is about 40 acres and has some water rights. They have about 18 acres of alfalfa. (INAUDIBLE) The current home was built in 1895 and there is also a couple of existing accessory buildings that they are intending on continuing to use. All the accessory buildings were built in 1992 and there is no other zoning record known. All the soils on the property are in between Class 1 and 3, however the piece of the property where the proposed project is going to be, is Class 3 soil only.

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 - Do you want to tell us a little bit more about what you're trying to do, Lisa?

Lisa Kittel: Yes, I'd be happy to. We actually are planning to build two buildings; both are structures for housing horses. Ryan trains horses for a living and I do as well, but not for the public, I train them for races.

Our proposed structure is basically (INAUDIBLE) of a pole barn and then a mare motel coming off at a 90 degree angle from it that would house a total of 21 horses. This will just be

Malheur County Planning Commission
May 28, 2020

incorporated with a horse training facility with an outdoor arena to run our businesses out of. The proposed site for it is currently just kind of dry grazing, that's a generous way of putting it, it's mostly a lot of kosha and goat heads so we think it would be a pretty good improvement to it.

Ryan Thomas: Our plan for the building is, one side of the 'L' is essentially a roof that we refer to as the mare motel, it's pretty common language in the horse world, but it's pretty much just a cover for a pen. And then the other side of the 'L' is like an equipment shed, it will have sides and a roof over it, it's a horse barn. Our biggest concern is, I do intend to run my horse training business out of it and we just wanted to have the right permits to build the building. The rest of the horse training facility is simply two outdoor arenas and cattle handling pens. My focus is cutting horses and stock horses, really common in the area, I can elaborate if need be.

Lisa Kittel: I think that kind of sums it up, we'd be happy to answer questions.

Kathy Clarich: I see that you have a 25 acre water right. Where's the other 7 acres? It says 18 acres is in Alfalfa.

Lisa Kittel: It's not currently being used. We'd like to start using that and watering some pastures but when we bought the place this past December, only the 18 acres was in alfalfa and the rest of the water right is currently unused.

Ryan Thomas: We've watered some tree lines with it and I'm getting the concrete built right now, the infrastructure for the (INAUDIBLE) part of the property was pretty delinquent so we're working on using those water rights for pasture for the horses.

Lisa Kittel: The proposed use doesn't overlap any currently irrigated areas.

Kathy Clarich: That's what I wanted to know, thank you. Does anybody else have any questions for them?

Eric Evans: Kathy, this is Eric, I apologize, I was trying to help John get in here, did you have a question for me earlier?

Kathy Clarich: I was going to ask you about, you said something earlier about the way it was put in the paper that... how far do we need to go and then do we have continuance, or what do you want to do?

Eric Evans: Yes I appreciate that, I wanted to mention it anyways. We've been getting used to using this GoToMeeting in the last few months throughout the whole County, actually County Court uses GoToMeeting, so we kind of accidentally posted the wrong access code and phone number for this meeting. All of the notices that went out to adjoining neighbors, Tatiana did catch it last week or the week before, but it didn't get us in under the 20 day notification period. Although we chose to have the meeting tonight, we cannot actually make the final decision. We have to continue this, so we can get all the way up but we can't close the hearing but we can have all the discussion. My assumption is, and this is going to be for both of these applicants tonight, my assumption is that next month we'll come together and have at least most of the information

Malheur County Planning Commission
May 28, 2020

and then you guys can close the hearing and make a decision next month. All of the discussions and everything can happen tonight.

Kathy Clarich: Okay, thank you.

Proponent Testimony.

Eric Evans: I'm going to interject on this: I did receive an email from Tom. Is there a Tom on the line? Tom Dikeman? My assumption is that I was reading this into the record, so if that's what you'd like me to do right now, I will read this into the record.

The email is addressed to me, Malheur County Courthouse, Vale, Oregon, Re: the Ryan Thomas/Lisa Kittel conditional use application for property located at 1751 Syringa Road, Adrian, Oregon. This is received from Tom Dikeman at wtdikeman@gmail.com.

It says:

"Dear Eric, my wife Sharon and I are neighbors to the above referenced applicants. Our physical address is 852 Redtop Road, Adrian, Oregon. The southeast corner of our property is the same point as the northwest corner of their property, so one could say that we're close neighbors. We would like to go on record as strongly supporting Lisa and Ryan's application. They are new to the area but we are already impressed by their ambition and work ethic. They have made great strides in cleaning up a neglected place and have expressed to us their plans for more of this effort in the future. We feel that their horse training business would be/is very compatible with the other agricultural pursuits in this area and we encourage the County to grant them the permission to proceed with their plans. Sincerely, Tom and Sharon Dikeman."

Tatiana Burgess: This is Tatiana. Right at 7:30 somebody was calling and they said that they did get the information with the wrong calling-in code and I gave them the correct information. If you could call one more time and see if there are any other proponents on the line right now, because somebody else was trying to call-in on their behalf as well.

Eric Evans: I'm going to go ahead and unmute everybody that has called in because it's kind of hard for them to unmute themselves. If there was somebody trying to talk earlier and they were muted, they can talk now.

Kathy Clarich: Okay, is there anyone in favor of this action?

No Opponent Testimony.

Kathy Clarich: Any other questions? Eric, do we want to do a continuance then?

Eric Evans: I don't think that we have to vote on a continuance? Do you guys usually vote on a continuance? I think it just happens.

Kathy Clarich: Do they have to agree to it or not?

Malheur County Planning Commission
May 28, 2020

Eric Evans: No, they don't have to agree to it.

Kathy Clarich: We will continue this hearing until the date of the next hearing.

Eric Evans: We will do a date and time certain so I don't have to necessarily notice for this.

Tatiana Burgess: June 25th is the next meeting.

Eric Evans: It will be June 25th and the time will be 7:30. I will have to put notice out because it will be on this exact same phone number and access information.

Kathy Clarich: Thank you Lisa and Ryan, we will see you next month.

NEW BUSINESS:

Applicant: Jeffrey Downie
1746 Highway 201
Adrian, Oregon 97901

Representative: Jeffrey Downie

Appeal of Planning Director's denial of a Deferred Replacement Dwelling. Planning Department File No. 2020-03-011.

Kathy Clarich: Now is the time to hear the request for an appeal to the Planning Director's land use decision in exclusive farm use zone for applicant, Jeffrey Downie. Planning Department file 2020-03-011.

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. John Faw made a site-visit.

Malheur County Planning Commission
May 28, 2020

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: ORS 215.283(1)(p).

Testimony, arguments and evidence presented must be directed toward these approval criteria or other criteria in State law, the Malheur County Comprehensive Plan or the Malheur County Code that the speaker believes to apply to the decision.

The failure of anyone to raise an issue accompanied by statements or evidence sufficient to afford the decision makers and the parties the opportunity to respond to the issue will preclude appeal on that issue.

An issue that may be the basis of an appeal must be raised no later than the close of the record. Such issues must be raised and accompanied by statements and evidence sufficient to afford the decision makers and the parties an adequate opportunity to respond to each issue.

The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the decision makers to respond to the issue precludes an appeal or an action for damages to Circuit Court.

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.

Tatiana, will you please read the staff report?

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

Eric Evans: This is planning department file 2020-03-011. This was initially an application for a deferred replacement dwelling. For this one, it's actually an appeal of my decision of denying the deferred replacement dwelling. On March 16th, I made an administrative decision to deny the application for a deferred replacement dwelling pursuant to ORS 215.283. It's on tax lot 800 and 801. The configuration that is right there is actually incorrect, it's a little bit different but he is in the process of doing a property line adjustment that will fix the issue that we had with the mapping. It is zoned exclusive farm use C-A1. It is 6.27 acres. It is used as farm or residential, a

little bit of both. It is accessed just south of Adrian on 201. It is in the Adrian Fire District. It is not part of a flood plain or anything like that. There's no historical zoning on it.

So just a real quick background on it, we received an application on March 12th, for a deferred replacement dwelling on this property, from Mr. and Mrs. Downie. In response to a letter that I submitted, which is a part of the record, to them, in order to get the process rolling. Currently, the parcel has a house, which was built in 1978. The initial request was to replace a non-existent home, a second non-existent home on the property. The expectation is, the property line adjustment, that would be from 800 to 801 would then bisect this property into two and allow for another legal site to build a home. I applied to ORS 215.283 and determined that, after going through all of the assessor's records going back to 1963, I couldn't find any records that showed that there was a dwelling on there prior to the house being built in 1978. Because of that, it was my determination that there was not substantial evidence on the record that would support that this met the requirements that are found in the ORS.

Kathy, just real quick, just so you know, I do have several letters, just when we get to there, several letters of opposition. Some may be on the line and will read those, others I will read on the record when the time comes.

Kathy Clarich: Okay, thank you.

Applicant Testimony

Kathy Clarich: Mr. Downing, I heard you on the line earlier so if you will please state your name and address.

Jeffrey Downie: Hi. Jeff Downie, 1764 Highway 201, Adrian.

Kathy Clarich: Do want to tell us what you're planning to do or where you were planning on putting the house and that stuff. We don't have any of that information.

Jeffrey Downie: Sure. I am just in the process of taking the two parcels that have always existed here, when I bought the property with the house, and the railroad property in 2003. I am doing a lot line adjustment to make them go perpendicular instead of parallel with the river and the highway. At the same time we applied for the deferred replacement dwelling for the Eastman family homestead, which existed and I provided at the time of that application that Eric referenced. Four affidavits, notarized, signed statements that tried to satisfy the requirements that House Bill 2746, that was passed in 2013, and regulates the deferred building criteria. Eric, like he said, denied that on the four affidavits and two of those were... well one was from me, one was from my wife and one was from our neighbor Keith Spiers and the other was from Marsha Spiers, in support. At the time, when Eric denied it, it was made clear to me that these four Affidavits wouldn't cut it and that I needed to get something more. So, Eric's decision was definitely congruent with other Planning and Zoning District decisions regarding this, at the time, especially since I didn't have any photographic evidence. So I reached out to James Eastman, who unfortunately is living in the Homedale Assisted Living Facility, and this was before Covid had struck so I was allowed to talk to him and his exact words were 'I have no idea

Malheur County Planning Commission
May 28, 2020

who you are but we must have met and walked the property because everything you're saying or recounting is true.' Chris Beebe, an employee, after hearing that gave me Cindy Neal's number, which is James Eastman's daughter and power of attorney, and said that I should contact her and see if she would help me out and she did. When I filed an appeal I turned in an Affidavit from Cindy Neal that basically substantiated the criteria that needs to be considered for a deferred replacement dwelling, as specified under House Bill 2746 and that is spelled out in her Affidavit. So I just wanted to point out the lady, Cindy Neal, who I have never met in my life, upon me reaching out to her and asking for help substantiated everything I'm saying. So, regardless of what the decision is currently going to be, I'd just like it to be noted in the record that my testimony, my wife's', the testimony of Keith and Marsha Spiers are substantiated by that. I'd like that to be focused on and that's new information since Eric made his decision, so I'd like people to really consider that.

Regarding the other point of Eric's denial, he had two points, one was that I didn't provide enough information (and I would agree with him at the time). He also in that denial said that even if I did provide enough information, the permit that was given in 1978 was a deferred replacement dwelling and I would just like to point out it was a normal building permit. Deferred replacement dwelling permits didn't exist like they do; it was passed in House Bill 2746 in 2013, so those are the rules we're playing with, they didn't exist in 1978 so we can't go back and apply that. So I'm just going to ask that we toss that argument out unless someone can voice a reasonable objection and help clarify how I'm seeing it.

Lastly, I would just like to add that I'm doing nothing different than my neighbors have done when they put in a house for their daughter to live at, who currently teaches at the school. My next door neighbors, Keith and Richard Spiers, it was done under the Balderson's, so I'm not taking away farm ground. In fact, it's the smallest parcel size I'm basically allowed to have, I'm putting it there, I already have power and a well, which Ron Jacobs helped put in in 2009 and he had me permit it for domestic usage because this has always been my plan and allowed for. Even if we won't let this fly I'll just suggest you guys tell me how to do the same permit that was done for my neighbors to get a building site there. So, thanks for your help and time, I appreciate it.

Kathy Clarich: Okay, does anybody have any questions for him?

Theresa Ballard: How many acres of water rights are there, for this piece of property?

Jeffrey Downie: I only have 2 point something acres and it exists basically in front of the house and in the place between Keith and Marsha Spiers and my place, to the north. So I picked the spot that has no agricultural water rights associated with it.

Theresa Ballard: Okay because there is one permit here that says it's on 8.0 acres.

Jeffrey Downie: Yeah, that's a primary permit. Ron Jacobs helped me put that in to keep my secondary Snake River water right. So you can't have a secondary water right, like mine, from 1957 unless I have a primary water right. So that primary water right only exists on paper, it's basically good the month of October and I want to say the month of April but it allows me to keep that second year round water right and that's why it's so valuable or important. So that is

Malheur County Planning Commission
May 28, 2020

what Ron helped me fix back then. I just would like to point out that Ron was a super fantastic help back then and I really appreciate his help and he is very knowledgeable on this subject here and take the opportunity to thank him in front of the committee.

TECHNICAL ISSUES AT 20:23:40

Kathy Clarich: Okay, does anybody have any questions for Mr. Downie?

Eric Evans: Just to make sure I'm going to unmute everybody because I've got some people on the line that, like I said, it's really difficult for them to unmute themselves when I mute them.

Kathy Clarich: If not, Eric do you want to go ahead and read in those that might be for this action?

Eric Evans: Yeah, I can do that. I can also make some comments on a couple of Mr. Downie's questions and concerns with my Staff Report, if you would like as well. That's your decision though.

Kathy Clarich: Yeah, go ahead.

Eric Evans: There is a section in the letter that I put, and also that's a part of the findings of fact that I proposed, that says, "It can be assumed that in 1978 when the current was constructed by Keith Smith, it was done as a replacement dwelling. This would therefore make the non-existent home an illegal dwelling and would therefore not meet the requirements of ORS 215.283." Actually House Bill 2746 didn't actually start the deferred replacement dwelling criteria, it just modified it. I couldn't tell you what year that it did start that.

The second point that I was trying to actually make with that is one, about land ownership and protecting rights of someone that owns property. In my opinion, when they built that house 1978 it did protect the property rights of that person and continue on allowing them to build a home on that property. That's my point, is just that, hey look, you had a house, they still have a house... if that makes any sense, whatsoever.

The second part is, he had mentioned a couple of the adjoining neighbors or neighbors that are close to them, they did not use criteria in 215.283(1)(p) to put a home, they used a completely different statute.

That being said, we have some people on the line, let's let them go first and I will read in everybody else that is not here.

No Proponent Testimony

Jeffrey Downie: Kathy, I would just like to point out the three Affidavits turned in with the original application could be considered testimony for us, that would be, again, Amber Downie and Keith and Marsha Spiers. So there's sworn statements and nothings changes, they substantiate the claim and they're okay with that.

Opponent Testimony

Rod Price: 1729 Highway 201, Adrian, Oregon.

Eric, you have a statement from me there, I would just as well have you read that than me read it, it may be clearer. If anyone has any questions, I will answer those after he's read my statement.

Eric Evans: This is from Rod Price, he just stated his address.

To the Malheur County Planning Commission, I request that this letter be read out loud in the meeting to be put into the record. My name is Rod Price. I farm on a fourth generation farm with my brother and nephew. When settlers came to this part of the US it was because of the projects like the Owyhee Dam, which was dedicated in July of 1932. Tunnel number five, approximately five miles long, was completed in 1935. Water from the tunnel comes out directly behind our home place. As laterals were developed, so was the farm ground. When the first settlers arrived they lived in very primitive conditions, such as; tar paper shacks, dug outs, tents, living with other people or whatever it took to live temporarily until they could build homes. My father's family came here from the dust bowl in 1937 and lived in a cut out in the bank of the river in the Kingman Colony area until they could get something better. The replacement dwelling that Jeff Downie is asking to replace was exactly one of these. This dwelling was very temporary and the requirements needed to replace this dugout in Oregon Statute 215.283 did not exist. He provided no proof of official record that it existed, as far as the County or State had recorded. There is no physical evidence in Jeff's exhibits, no physical address, no pictures, no power bills, etc... I'm not saying that a primitive structure did not exist because it did. But this week I was questioning Keith Tolman, 92 years old. Keith grew up and farmed all his life in this area and now resides in Boardman, Oregon. He said there was a structure on the river but when his family arrived in the spring of 1939, the Eastman family did not live in the dugout. He said the Eastman's lived on the west side of the highway. I asked him about the dwelling on the river and he said that you could barely see the roof from the road, it had no side walls above ground level, it was more like a basement. He said he was never in it because no one lived in it from the time his family arrived in 1939. He said the Eastman kids would walk the railroad tracks to the naptin school and my mother Norma Jean Derking, who's friend was Phyllis Eastman, would join them, as well as Keith, as they passed by on their way to school. So Keith knew the Eastman kids and would have known their living conditions. I also talked with Amory Cameron, 90 years old, and he said that the Eastman's lived in the Big Bend area next to the Cameron family, he thought, from 1936 to 1938 before the Eastman's moved across the river south of Adrian. Downie keeps referring to the property as the Eastman homestead, that can be deceiving and needs to be substantiated that it was homesteaded. Keith Tolman said an Oregon land company was finding buyers for property at that time and that is how is folks and other obtained their farm ground. If a replacement dwelling is given to the Downie's with the total lack of evidence or proof and on Affidavits from people, including himself, that knew nothing about what went on prior to them coming here in 2004, I think you have opened up a can of worms for others to do the same thing on any old structure or dwelling that existed in years past. I hereby ask the Planning Commission to deny this application for a replacement dwelling on the basis of no evidence in regards to the requirements necessary in Oregon Statute 215.283 and that what was testified in the Affidavits were inaccurate. The land and the adjoining land around it are classified C-1A or EFU ground and I

Malheur County Planning Commission
May 28, 2020

strongly feel that this land should be left for its intended use, farming, and not for homes or subdivisions. Submitted by Rod Price on May 28, 2020.'

Kathy Clarich: Does anybody have any questions? If not, Eric, do have any more?

Eric Evans: I have four more. Not everybody is as long winded as Rod. Just so you guys know the reason I didn't send these to you, is literally, I got them this afternoon, I didn't get a chance to get them all to you. So you get to listen to boring me speak them into the record.

'Larry D. Price, 1681 Highway 201, Adrian, Oregon 97901. This is dated May 20, 2020, to the Malheur County Planning Department, to be submitted for the record and read to the Malheur County Planning Department. My name is Larry Price and I am writing to comment on Jeffrey and Amber Downie's petition for deferred replacement dwelling, planning department file number 2020-03-011. I own farm property to the south of the Downie property. I have resided in this area for 64 years. If this petition is granted it will change the intended use of the farm ground since it is zoned C-A1, Exclusive Farm Use. Our business, Price Seed Farms, LLC., has custom farmed this property, Jeffrey and Amber Downie's place for four out of the last five years. This property has a pressurized water sprinkler system with water rights. Having a house within 100' of our farm ground would impact both properties as we spray night for our alfalfa seed production. Jeff's description of the Eastman house is not accurate. My first recollection of this river front property was in 1966 or 1967 when I was 10 or 11 years old. I was hunting along the river bank with my father, Kenneth Price, when he pointed out the Eastman dirt house location. It was about a 10'x15' dugout dirt impression. Weeds were growing up in the area where the house had been, there was no roof or structural sidewalls as it was a house dug in the dirt. There were no power poles to it when I saw it. My dad described it as a dugout cave-like house with a make shift roof. I have walked across this area several times since and I never saw a house there. Mr. Downie claims it was functioning as a house in the late 1950's. If they had been living there in the late 1950's why wasn't there nothing to see except dirt and weeds in the mid 60's. Here was what I know about the Eastman property. They built a structure with living quarters in 1/3 of a building with windows, a door, and stove with a stove pipe and also containing a two stall garage or storage. They moved into this structure in 1939. This building still exists and it 1946 the Eastman's built a house next to the structure. Both are still occupied and now owned by Tammy Hutchings. These structures are located west of Highway 201, across from the property in question. These were all owned by the Eastman family at one time. My opinion is there is no evidence for declaring this property as a deferred replacement dwelling. Respectfully submitted, Larry D. Price.'

Eric Evans: Questions? Okay, I will continue on. I guess Larry is there too if you had questions for Larry as well, it looks like he switched spots. Okay, I have three more.

This one is from Tammy Hutchings, from countryishere@yahoo.com.

'Dear Planning Commission Members, I have lived south of Adrian since 1996. I have traveled from my house to the school in Adrian a numerous amount of times from that day. Jeff Downie in his Affidavit, in paragraph 11, states that in 2011, the homestead house was becoming unsafe and that the visual blight or lack of aesthetic appeal of the homestead house was the reason that he demolished it. In 2010, I bought the Eastman house (what the neighbors called it) and some

Malheur County Planning Commission
May 28, 2020

property belonging to it after the original Eastman homestead (as referred to by Mr. Downie) had been split a couple of times. I never saw any dwelling below my house on Mr. Downie's property other than a little red building that was already there, which is a well house that Mr. Downie put in in 2009. Mr. Downie has a field of hay below my house on the river and one on the north side of his own. When I purchased this property that I now live on, I figured everything around me was agriculture, which it is. I would like to see the area remain farm ground. I feel that it is the Planning Commissions responsibility to protect that way of life for me and others that derive their income from farming. Also, if a house built on the new 2.29 acre tax lot it will destroy my view of the river and the aesthetic value of the area. Thank you for hearing my concerns on this matters, Tamara Hutchings.'

This one is from Ray Day Jr. and I do not have an address for this.

'I, Ray Day Jr., am not in favor of the deferred replacement dwelling in exclusive farm use zone. My grandfather-in-law was one of the first people in 1939 to start developing property in this area. I have been visiting for over 30 years, listened to many stories and I've never heard any mention of any house structure in question. I have also been a land owner here since 2007. I am not for turning farm use zoned ground into residential property. I do not agree with some of the development that has already taken place in the area. I do not want to see more houses. If we do this one, where will it stop? Sincerely, Ray Day Jr.'

Last but not least.

'I, Christy Day, am not in favor of the deferred replacement dwelling in exclusive farm use zone. Sincerely, Christy Day.'

Kathy Clarich: At this time I guess we just do a continuance on it unless anybody on the Commission has any questions.

Linda Simmons: Does Mr. Downie have any rebuttal?

Applicant Rebuttal

Jeffrey Downie: I do, thanks for asking. Am I allowed to do that now?

Kathy Clarich: Yes, if you want to. You have 10 minutes.

Jeffrey Downie: I won't need that much. I listened to that and I'd agree with the first three, the Price's and Tammy. Let's just start with Larry and Rod. When I turned in my application it was on my recollection of conversation I had with Jim Eastman. I didn't grow up here. That's how I turned it in. So when Eric originally denied it, which I said at opening, I agreed with based on the evidence he had. Then I reached out to James Eastman, daughter/power of attorney, Cindy Neal, that Affidavit gets corrected and those time/dates are a lot closer to what Larry and Rod said. So I'd like to point out that I turned in a corrected affidavit from a direct descendent of the homestead, Cindy Neal. Those dates, 1936... I think Larry said 1939. I think I heard Rod say 1938, so we're off a couple years there and then the Affidavit says late 1940's so I would like to

Malheur County Planning Commission
May 28, 2020

add, again, that I corrected my own evidence as it was unfolding to me, I didn't hold it back. I kept it all for everyone to see, totally transparent, I'd like that to be first and foremost.

And then with regard to the idea of it being farm ground, it's zoned exclusive farm use but there is no water rights that I can use on that. I was using it illegally and that's why when Ron Jacobs was out here last fall, he informed me that I should be shutting that down because I was jeopardizing the entire small water right that I have. So that's why, like Larry or Rod said (I can't remember which one of their letters), that they stopped farming that is because I was watering that parcel illegally. I'd like to state that I was illegally using Snake River water to water a parcel that I didn't have a water right for. So that entire water system that Rod and Larry Price quoted, it's illegal out there. I can't use it. If they're willing to sell me water rights then we could take that mind set of, this is exclusive farm use but I'm stuck with dry ground. So I'm just trying to make do with that and configure things accordingly.

With regards to Tammy's view, the way we constructed the parcel, she'll have a nice view straight across.

I'd just like to close with the idea that it doesn't matter if it's April with (INAUDIBLE) mineral products or the Spiers next door or Rod Price for Kelsey's house, these people are all doing it, they are just doing it under different configurations. So if I need to come back before you with a different building permit request, that's fine, I'm totally willing to jump through the hoops. But to sit here and ridicule me and say that I'm doing something different from what they've all done is really inappropriate and very hypocritical.

Thank you.

Kathy Clarich: I'm confused on your water rights because one thing says you have 8 acres of water rights and the other one says there is 25 acres of supplemental irrigation. According to what I understand of water rights you can't have supplemental unless you have that many acres of regular water rights.

Jeffrey Downie: You are correct Kathy. That is why in 2009, Ron helped me put in that 8 point something primary irrigation water right off the well and it was to preserve that 1957 water right that comes with my property that's 2.57 acres, it's a secondary water right. If you look, the other part of it, 22 point something is across the street on Tammy Hutchings place but that's long been abandoned by Oregon law. It wasn't being used when I showed up here in 2003 and if I'm not mistaken it's basically considered abandoned after 5 years, if I'm not mistaken if it's not been used. So I'm really not disrupting the agricultural farming community. They can keep doing their thing. Or give me water so that I can turn this into farm ground but no one has been willing to do that. That's why Ron helped me fix it and preserve what little legal water I had. When Ron was here he told me he was retiring in April and that the new Water Master was going to be coming through and cracking down on people who didn't have authorized water so I sold my wheel lines and got prepared ahead of time. I don't like getting angry letters.

Kathy Clarich: Okay, well I think we maybe need to have a little more clarification on water rights. Anyways, does anybody else have any questions for him?

Malheur County Planning Commission
May 28, 2020

Chad Gerulf: I do. The Affidavits, everybody just kind of says that in conversation they heard about a home that was there at one point in time but is there actually any proof? I mean the County needs proof to grant this permit. We need proof that there was a substantial house there. I've seen a lot of houses from that era that are still standing today, they've put power into them and foundations and it seems like somebody would know where the remnants of the house were at least. It would be nice to have some of that physical proof.

Jeffrey Downie: Correct Chad. I would agree with you. There is cement wreckage from that house; pillars that's exposed. I offered Eric in a letter and email if he wanted to come out and take a look. I believe the Affidavit of mine says that and no one has wanted to come out. But Larry and Rod's accounts of it are spot on as far as I'm concerned. They're right, it was a dugout house. I'm not trying to misrepresent that and I already corrected the dates. So all that was available, were three cement walls and the front pad wood front siding with a window, there is no pictures. I acknowledge the picture that I found, I was told was not a picture of that, so I didn't turn it in with my affidavit. So, again, I would agree with the description that you received in the opposition. The only thing that I have is the Affidavit of a direct descendant, the power of attorney for James Eastman, so that's unfortunately all I have. I asked her to help, and she wrote the Affidavit in accordance with the criteria that the law specifies. Her number is provided, we could call her, we could follow up if you'd like. She said she would help me. I would say that I would agree you can't take that (INAUDIBLE) but I was hoping the second Affidavit of a descendent would help.

Kathy Clarich: Okay, well at this time, if nobody has any other questions then we'll just have continuance until next month also with this one.

Eric Evans: So can I just clarify things to make sure that some of the legal standards are understood, Kathy?

Kathy Clarich: Okay, thank you.

Eric Evans: First of all, when it comes to farm use, just to make sure because there are some newer board members here. Farm Use is not all about irrigated acres. So when we are talking Farm Use it's not about whether you can grow a crop on a piece of property, as we kind of heard earlier in the first one. Farm Use also is the raising of animals, it's also storage... so even though you may not have water rights you can build a hay shed on a piece of property and that falls within that guide of farm use. So it doesn't discount just because it doesn't have water rights, a piece of property at all because there are many activities that you need those types of non-irrigated lands for farm use and regular normal farming activities. Also, I perused, I went for multiple days looking for that little bit of information that would substantiate that criteria that's met. If you guys remember, if you look on my staff report, the things that we need according to 215.283(1)(p) is the dwelling has to have or formally had exterior walls and a roof structure, indoor plumbing consisting of (and this is not one or two of these, it's everything) a kitchen sink, toilet, bathing facilities all connected to a sanitary waste disposal system. It has to have or had interior wiring for interior lights and a heating system. Sometimes with some of these homes that I grant these deferred replacement dwellings I can login to our assessors records and they have

Malheur County Planning Commission
May 28, 2020

pictures, they have some kind of County document that is substantial evidence that support their claim. In this case I came up empty. That's it. Does anybody have any questions for me?

Kathy Clarich: I have one question. Is that tax lot 801, is that what he's calling railroad property? Is that used to be where the tracks used to go through?

Eric Evans: So if you can see my screen right now, where it shows 800 should be just a straight line that goes northerly and southerly parallel to Highway 201. I believe it's 100' from the Highway 201 right-of-way out, there should be just one straight line and that should technically be 801 and 800 would be where the house is. A few years ago (not to get to far into the weeds but since you asked me this question) Mr. Downie (it could have been a prior owner) had consolidated that for taxing and mapping purposes only, the consolidation was not an actual planning action and therefore, I guess you could say, it was able to be undone. So when he undid this and put the train parcel back, this is the map the State gave us and I don't know why but we've chosen, because we do have to pay the State to do our mapping for us, to not do anything until some of these actions are taken care of. So what you should see is a line that's drawn from about 100' from the Highway that goes all the way down south to his piece of property, signifying where the railroad right-of-way used to be.

Kathy Clarich: Okay, so the house that's on it now would actually be closer to the river piece of property.

Eric Evans: Yes.

Kathy Clarich: Alright, that was the only question I had. Do any other Commissioners have any questions?

John Faw: I have an easy one I think. Has there ever been any evidence of a second residence on this parcel of any kind?

Eric Evans: So I have zero evidence. Mr. Downie had talked about sworn Affidavits but this isn't a court of law so we don't swear anybody in, so there are no sworn Affidavits. So there are some notarized Affidavit but when you get notarized you don't get sworn in so it has no more bearing than me just sitting here talking to you and my statement. So it's testimony but it's not a sworn statement. Did that answer your question John?

John Faw: Yes, thank you.

Kathy Clarich: Any other questions? Okay, then I guess we'll hold this over for a continuance until next month also.

Eric Evans: I'll apologize to you once more Commissioner's and applicants as well that I made the goof up of putting the wrong information. I'd like to be coming to a final decision here, so I definitely apologize for that.

HEARING CONTINUED TO JUNE 25, 2020, AT 7:30 P.M.

Malheur County Planning Commission
May 28, 2020

MEETING ADJOURNED AT 8:45 P.M.

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: _____