

## STAFF REPORT

Planning Department File No. 2020-08-017

### CONDITIONAL USE APPLICATION FOR TWO NON-FARM DWELLINGS AND TWO NON-FARM PARTITIONS

Planning Commission Meeting Date: September 24, 2020

1. **APPLICANT:** Vaughn and Jennifer Ellsworth  
5452 N Hickory Burr Pl  
Boise, ID 83713
2. **PROPOSED ACTION:** Conditional Use approval for two non-farm dwellings and two non-farm partitions.
3. **PROPERTY IDENTIFICATION:** Tax Lot 800, T21S, R46E, Sec. 22; Assessors Map 21S46E22; Malheur County Reference #10679.
4. **PROPERTY LOCATION AND DIRECTIONS:** Approximately 800 ft west from Hwy 201 on Snively Gulch Rd, In Adrian OR.
5. **ZONING:** Exclusive Farm Use (C-A1) and Exclusive Range Use (C-A2).
6. **PARCEL SIZE:** The parcel is 81.10 acres.
7. **PARCEL USE:** Part of the property is currently being farmed with 42 acres with water rights. The non-irrigated land is unfit for farming.
8. **SURROUNDING USE:** The parcel is surrounded to the east and north with properties currently being farmed with farm dwellings on them. The rest of the neighboring properties are all in the ownership of the Bureau of Land Management.
9. **ACCESS:** Access to the property will be via Hwy 201 and Snively Gulch Rd. (Letter Attached). The proposed partition #1 (the northern partition) will be further accessed via secured easement, granted by the current owners, or possibly accessed via Emerald Slope Rd to the north, and accessed via easements as well, currently not yet secured. The proposed partition #2 (to the south) will be accessed directly off Snively Gulch Rd.
10. **SANITATION REQUIREMENTS:** A DEQ approved sanitation system would be required for each proposed non-farm dwelling.
11. **FIRE PROTECTION:** The entire parent parcel is within the Adrian Rural Fire Protection District. (Letter attached).

**12. NATURAL HAZARDS:** None.

**13. WATER RIGHTS:** The property has 42 acres of water rights attached to it, through the Owyhee Irrigation District (letter attached). None of the proposed partitions have any water rights.

**14. SOIL TYPE:** There is an insignificant portion of the farthest north-east corner of the property with class VI soils and a small portion along the northern boundary of the property with class VIII soils. None of the rest of the soils on the parent parcel have been surveyed by the National Resources Conservation Service. Both the proposed partition sites are situated on soils incompatible with farm use, as outlined in OAR 660-033-0130 (4)(c)(B).

**15. ZONING HISTORY:** In 2007, the subject parcel was part of a series of property line adjustments, which involved 3 of the adjoining properties (tax lots 300, 600 and 700). Those adjustments were recorded in 2010 (recordings 2010-6876, 2010-6878, 2010-6879) and it modified the subject parcel's size from 59.85 acres to the current 81.10 acres.

In addition, per Malheur County Assessor's office, the entire parent parcel has been assessed at the real market value and this approval will not be subject to 10 year back taxes penalty.

#### **GENERAL CONDITIONAL USE CRITERIA**

**MCC 6-6-7 - GENERAL CRITERIA TO EVALUATE SUITABILITY:** In considering the suitability of proposed conditional uses, the Planning Commission shall base its decision upon the following criteria:

- A. Comprehensive Plan goals and policies, as applicable.
- B. Specific plan recommendations

**Proposed Finding: MCC 6-6-8-1 regulates the conditional use process for a non-farm dwelling and MCC 6-6-8-2 regulated the conditional use process for a non-farm partition.**

- C. Existing development and viewpoints of property owners in the surrounding area.

**Proposed Finding: Letter notice was sent to adjoining landowners on September 1, 2020 and published in the Argus Observer on September 4, 2020. A letter of opposition was received on 09/16/2020, signed by 4 property owners within the 1 mile radius study area, identified as Exhibit #4.**

- D. Availability of services and utilities.

**Proposed Finding: The entire parent parcel is located within the Adrian Rural Fire Protection District. All services and utilities are available.**

- E. The effect of the proposed use on the stability of the community's social and economic characteristics.

**Proposed Finding: The proposed dwellings will have no effect on the farming/ranching practices that would interfere with the stability of the community's social and economic characteristics, due to the fact that both the proposed partitions are on ground unsuitable for farming. All the existing farm ground will remain unchanged.**

- F. It does not interfere with traditional fish and wildlife use of habitats determined critical or sensitive in the Fish and Wildlife Habitat Protection Plan for Malheur County.

**Proposed Finding: The proposed dwelling is outside the sage grouse habitat. There is no identified critical fish habitat. Because of those findings, the proposed structure would not interfere with traditional fish and wildlife.**

- G. General Criteria

1. Increasing setbacks of structures to reduce possibilities of overshadowing adjoining property, noise, odor or night lighting nuisances.

**Proposed Finding: The proposal is 2 non-farm partitions and 2 non-farm dwellings. Only the proposed partition#2 (to the south) is set for immediate development and there are no developments in the immediate proximity, as the land is BLM owned. The proposed partition # 1 (to the north) would be at least 600' from the nearest home site therefore there will be no impacts on adjoining property.**

2. Landscaping improvements for the visual benefits of the subject site and for the improved appearance of the neighborhood and County.

**Proposed Finding: The proposed dwellings would benefit the appearance of the neighborhood and County.**

3. Location and size of driveway access points and right-of-way widening and improvement for present and future traffic circulation and safety.

**Proposed Finding: The applicant will be granted access via easement from the current property owner to approach to Snively Gulch Rd, for the proposed partition #1 and the proposed partition #2 will be accessed directly via Snively Gulch Rd. (Letter from Road master, regarding proposed partition #2, included).**

4. Visual screening of outdoor waste and storage areas.

**Proposed Finding: The proposed development is for dwellings. Outdoor waste storage will be minimal.**

5. Control and focusing of outdoor lighting to avoid glare being directed beyond property limits.

**Proposed Finding: Control of outdoor lighting will not be necessary.**

6. Special criteria listed below, as applicable:

H. Allowance of Certain Uses: A use allowed under Section 6-3A-3 of this Title shall be approved only where it is found that the use will not:

1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
2. Significantly increase cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. (Ord. 86, 12-7-1993)

**Proposed Finding: The proposed non-resource dwellings will not force significant change in accepted farm or forest practices on surrounding lands devoted to farm use, nor significantly increase the cost of accepted farm practices. The parent parcel is surrounded by property that is zoned exclusive farm use devoted to pastures, range and irrigated crops and BLM lands. The parcels that are zoned exclusive farm use are directly east will not be impacted by the placement of the dwellings on the proposed partitions. The proposed dwellings will have private driveways, designated to only access the proposed dwellings, so there will be no impact to the Snively Gulch Rd traffic.**

#### **SPECIFIC CONDITIONAL USE CRITERIA**

##### **MCC 6-6-8-1 - NONRESOURCE DWELLINGS IN EFU, ERU OR EFFU ZONES:**

A. The use:

1. Is compatible with farm uses and is consistent with ORS 215.243; and

**Proposed Finding: The current farming will continue. All existing farm ground in this proposal will remain unchanged. The granting of this application will not result in loss of natural resources, and the amount of open land used for agriculture use will not change. Therefore, the proposed use is compatible with farm use.**

2. Does not interfere seriously with accepted farming practices on adjacent lands; and

**Proposed Finding: The sites of both the proposed partitions are not currently being farmed. Therefore, a single-family dwelling on these partitions will not interfere with adjacent farm practices.**

3. Does not materially alter the stability of the overall land use pattern of the area; and

**Proposed Finding: Due to the adverse condition of the soils and zoning history of the parcel, there is no other further development anticipated within the study area.**

**Added by OAR 660-033-130(4)(a)(D) - June 1, 1998:** In determining whether a proposed non-farm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new non-farm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall;

- i. Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other adjacent agricultural areas. Findings shall describe the study area, its boundaries and the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area.
- ii. Identify within the study area the broad types of farm uses (irrigated or non-irrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, non-farm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of non-farm / lot-of-record dwellings that could be approved under subsections (3)(a), (3)(d) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993, and the parcels larger than the minimum lot size that may be divided to create new parcels for non-farm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this subparagraph:
- iii. Determine whether approval of the proposed non-farm / lot-of-record dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it

more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

4. Is situated on generally unsuitable land for the production of farm crops or livestock considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of tract.

- B. As a condition of approval, the owner is required to allow the following statement to be entered into the chain of title for the non-farm parcel: (the use of a straw-man may be necessary):

“The property herein described is situated in or near a resource (farm or ranch) zone, where the intent is to encourage agricultural use and minimize conflicts with non-resource uses. Non-resource residents may be subjected to common, customary and accepted farm and ranch practices that are conducted in accordance with federal and state laws but ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees, by the recording of this statement, and in return for allowing a non-resource dwelling on this property, hereby accept the potential impacts of accepted farm and ranch practices as normal and necessary and part of the risk of establishing a dwelling in this area, and grantee acknowledges the need to avoid activities that conflict with nearby resource uses.” Evidence shall be provided showing the lot or parcel upon which the dwelling is proposed to be located has been disqualified for valuation at true cash value for farm use under ORS 308.113.

**Proposed Finding: Due to the inexistence of the water rights and adverse condition of the soils on the proposed partitions, it cannot be reasonably put to farm use in conjunction with other land. From these facts, it is concluded that the proposed dwellings will be generally placed on unsuitable land for the production of farm crops and livestock.**

**MCC 6-6-8-2: NONRESOURCE PARTITION IN AN EFU, ERU OR EFFU ZONE:**

- A. Nonfarm Use: The creation of all new parcels intended for nonfarm use shall meet the following requirements:

1. Is the proposed use compatible with agriculture uses and is it consistent with ORS 215.243. How? Address each issue;

**Proposed Finding: The proposed partition #1 on the north side of the parent parcel will be approximately 2 acres and there is no immediate proposed development and will be reserved for a potential non-farm dwelling for the current parent parcel owners. The site of the proposed partition #2, to the south will be about 2.20 acres and will be the site of the proposed non-farm dwelling for the current applicants. Neither one of the proposed partitions**

**sites currently have water rights. The current farmed land will not be impacted and will continue to be irrigated and farmed.**

2. Is the proposed use located where it may interfere seriously with accepted farming practices on adjacent lands? What conditions exist to avoid this problem?

**Proposed Finding: The proposed partition #1 is located on a hillside and both partitions are outside of farm operations.**

3. Will the proposed use materially alter the stability of the overall land use pattern of the area?

**Proposed Finding: The sites of both partitions are currently undeveloped, not suitable for farming.**

4. Is the proposed use situated on generally unsuitable land for the production of agricultural crops or livestock considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of tract? If so, the following factors must be met:
  - a. If located on range or agricultural lands, are the proposed nonresource parcels only as large as necessary to accommodate the use and provide any buffer area needed to ensure compatibility with adjacent agricultural uses? The intent is that Class I through IV soils be included within nonagricultural parcels only when the limited extent or physical configuration of such soils make it impractical to keep them consolidated in an agricultural parcel.
  - b. Are the proposed parcels located on land with predominantly low productivity V through VII soils not suited for agricultural use and are large enough to accommodate the use and provide any buffer area needed to ensure compatibility with adjacent agricultural uses?

**Proposed Finding: The soils on proposed partition #1 are all classified as class VIII soils. The soils on proposed partition #2 haven't been surveyed by the NRCS and are deemed not suitable for row crops. In addition, there are no water rights on these sites.**

5. A new nonfarm parcel shall not be approved for a use that will have a significant adverse impact on the quality of farm or range land, watersheds, fish and wildlife habitat, soil and slope stability, air and water quality, or outdoor recreation areas. In what ways do the proposed parcels avoid conflict with these items?

**Proposed Finding: The natural landscaping will be used to minimize the impact and conflict with the farm. The watershed from the proposed non-farm partitions will be generally contained onsite. The proposed development will meet environmental standards for air and water quality.**

6. Is an existing dwelling used as a residential home for up to six (6) persons who fit within the definition of persons listed in ORS 443.400(5) through (10)?

**Proposed Finding: Both the proposed partitions are for single-family residences that fit the criteria listed in ORS 443.400(5) through (10).**

7. Is an alternative dwelling used so that a historical dwelling may be preserved without occupation as provided by ORS 215.263(8)(b).

**Proposed Finding: There are no historical dwellings that are located on the parent parcel.**

## **PROPOSED CONDITIONS OF APPROVAL**

1. The following statement must be entered into the chain of title for the new non-farm dwelling parcels: (Parent parcel is tax lot #800, Section 22, T21S, R46E, Assessor's map 21S46E22. Malheur County Reference #10679)

*“The property herein described is situated in or near a resource (farm or ranch) zone, where the intent is to encourage agricultural use and minimize conflicts with non-resource uses. Non-resource residents may be subjected to common, customary and accepted farm and ranch practices that are conducted in accordance with federal and state laws but ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees, by the recording of this statement, and in return for allowing a non-resource dwelling on this property, hereby accept the potential impacts of accepted farm and ranch practices as normal and necessary and part of the risk of establishing a dwelling in this area, and grantee acknowledges the need to avoid activities that conflict with nearby resource uses.”*

2. Adequate access shall be secured for each individual partition and an easement agreement must be entered into the chain of title of each new parcel.
3. An ingress/egress easement and road maintenance agreement must be entered into the chain of title of properties that grant access for the benefit of the new partitions.
4. Adequate firebreaks shall be constructed and maintained to minimize danger from potential wildfire.
5. This approval is valid for four years from the date of this order. Substantial action must be taken within this time period or the approval will lapse.

## **EXHIBITS**

1. Letter from Owyhee Irrigation District
2. Letter from County Roadmaster
3. Letter from Adrian Fire Department
4. Letter of opposition from Tim & Kris Martin, Eric & Jennifer White, Mike & Jackie Ready and Herold & Joan Perkins.