

## Malheur County Planning Commission

The Malheur County Planning Commission Meeting was held remotely, via GoToMeeting, on September 24, 2020. Kathy Clarich called the meeting to order at 7:30 p.m.

### MALHEUR COUNTY COMMISSION MEMBERS PRESENT:

Kathy Clarich  
Ed Anthony  
Linda Simmons  
John Faw  
Rob Kindschy  
Clark Forsyth

### PLANNING DEPARTMENT STAFF MEMBERS:

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

### NEW BUSINESS

Applicant: Joshua Jacobson & Meli Lyon  
878 Coyote Gulch Road  
Adrian, Oregon 97901

Owner of Record: Lyon Family Living Trust  
878 Coyote Gulch Road  
Adrian, Oregon 97901

### ***Conditional Use Permit for two Non-Farm Dwellings and two Non-Farm Partitions. Planning Department File No. 2020-08-015.***

Kathy Clarich – Now is the time to hear the request for a conditional use permit two non-farm dwellings and two non-farm partitions in exclusive farm use zone by applicants Joshua Jacobson and Meli Lyon. Planning Department File No. 2020-08-015.

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. None.
4. Do any members of the County Planning Commission have any conflicts to disclose?

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- 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. None.
6. Do any members of the County Planning Commission have any ex parte communication, including any site visits, to disclose?
  - a. Kathy Clarich - Site Visit.
7. Does anyone object to any members of the Malheur County Planning Commission hearing this application?
  - a. None.
8. Does anyone challenge the County Planning Commission's jurisdiction to hear these matters?
  - a. None.

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: General Criteria to Evaluate Suitability, 6-6-8-1: Specific Conditional Use Criteria Non-Resource Dwelling in EFU, ERU or EFFU Zones, 6-6-8-2: Specific Conditional Use Criteria Non-Resource Partitions in EFU, ERUF or EFFU Zones, MCC 6-3A-3: Allowance of Certain Uses and OAR 660-033-130(4)(a)(D): Agricultural Lands.

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

At this time I will ask the applicants to state their name and address.

Kathy Clarich - Let's start with the staff report for the County, that would be Tatiana.

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

Tatiana Burgess – This is the application for a conditional use permit for two non-farm dwellings and two non-farm partitions, Planning Department file 2020-08-015. The applicants are Joshua Jacobson and Meli Lyon, residing at the 878 Coyote Gulch Road in Adrian, Oregon. The owner of record is Lyon Family Living Trust at 878 Coyote Gulch Road in Adrian, Oregon 97901. This parcel (as shown on the screen right now) is Tax Lot 200, Township 22 South, Range 46 East, Section 27, on the Assessors map 22S46E27, Malheur County Reference 10977. This parcel is off of Highway 201 on Coyote Gulch Road and it's on a shared zone of Exclusive Farm Use and Exclusive Range Use. This little size of the piece is about 157.15 acres. Only part of this property is currently being farmed, having 72.8 acres of water rights. The non-irrigated late is currently considered unfit for farming and it hasn't been assessed for the National Resource Conservation survey. The surrounding areas are being farmed or are surrounded by BLM land to the west. The current owners of the record do own a couple of other properties to the south the parcel in subject right now. The access to the proposed partitions would be off of Coyote Gulch Road, however, the proposed partition no. 1 (that is the one furthest to the north on the parent parcel) will be accessed via a secured easement between the current property owners and the applicants. Both non-farm partitions would have to have adequate DEQ sanitation systems. Right now there's only a proposal to develop the further northern partition which is 4 acres. The partition to the south is proposed to be 12 acres and that is supposed to be secured for a future home site for the current owners to be developed at the time when they are wanting to replace their existing home. The zoning history, in 2005 there was a permit that was issued for an addition to the existing dwelling that was file number 2005-07-004. In 2012 there was a manufactured home that was placed on the property for the purpose of being used as a medical hardship dwelling, planning file 2012-01-001. That manufactured home had been removed the moment the hardship ended. And then in 2017, there was another manufactured home placed on site on the current property under the same farm dwelling criteria, planning department file 2017-03-015 and is currently being occupied by the applicants in question, Joshua Jacobson and Meli Lyon. It's supposed to be removed if the non-farm partition is approved and once they have the home built they are going to have the manufactured home removed. I think that's all I have.

Kathy Clarich - Okay. So we have Joshua on the line?

**Applicant Testimony**

Joshua Jacobson - Yes, Joshua is here and Meli as well. Also, the current property owner is with us, Bernie Lyon.

Kathy Clarich - Okay, so Joshua why don't you tell us what your plan is. Tell us a little more about what's going on.

Joshua Jacobson - Okay. As Tatiana has mentioned, the parent property, the whole property acreage is 240 acres. We're just asking to partition 4 acres off of a hill side, non-farmable area. It's never been irrigated. It's to the north of the property. We plan to build a residential home for Meli and myself to live. We'll also be (of course for family) so we'll be helping out on the farm, as we do now and helping execute tasks and projects and supporting the farm. (INAUDIBLE) I work

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from the home so I will be working from the home in my current job. And that's really it. Do you want me to go into more detail about anything?

Kathy Clarich - Does anybody on the Planning Commission have questions for them? I have a couple of questions for you. The owner of the property, are they going to retain the second parcel or are you purchasing both parcels from them?

Joshua Jacobson - They're going to retain the second parcel on the application. So we're just going to have the 4 acre piece and they're going to retain the second parcel as a future area for them to build a home.

Marie Lyons - This is Marie Lyons. Our home was built in 1915 and it's pretty much functionally obsolete. It's built on a slab and there is no remodeling it so we hope to build something more functional and useful, eventually.

Kathy Clarich - Okay. So I went out there myself, to the property. Which house is yours, the one before...?

Joshua Jacobson - Which one is Marie's? Hers is the home on the west end.

Marie Lyons - Josh and Meli live in a tiny (as you might have noticed) 399 square feet. So they need something better that's permanent.

Kathy Clarich - And so there's going to be easements to both of these properties?

Marie Lyons - Yeah. Josh and Meli will need an easement to cross the driveway so that they have a road maintenance agreement. But if we build on the second parcel we won't need an easement because we'll retain that and we will just put a road on our own property.

Joshua Jacobson - And that road is also County owned, right?

TWO PEOPLE SPEAKING AT THE SAME TIME

Tatiana Burgess - Kathy, if I may, the proposed partition site for the second partition its northern border is going to be off of Coyote Gulch Road. Right there kind of in the middle of the parcel but directly south (INAUDIBLE) that we see on the map right now so it would not need its own easement, from my understanding.

Marie Lyons - That's correct.

Kathy Clarich - I guess my question is, there's no road that we would approve a house for on that second parcel as it is because it has to meet the fire codes that the County and the State have. Is that something that you're planning on going ahead and doing or are you just going to wait and see in the future what you want to do then?

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Marie Lyons - On our part? Oh I see... It was just be a driveway and we would make it accessible to the fire department. It would not be road it would just be a driveway up to the house site.

Ed Anthony - So how long of a driveway is it going to be?

Marie Lyons - Well we haven't (INAUDIBLE). It's a pretty large parcel. We're just asking so that we can do it later, we haven't actually designed the driveway.

Joshua Jacobson - And then potentially go up the canal road to the south and then about where the road bends you take off to the east and it's a pretty level spot. I believe it's an old road right there so it's a pretty good grade right there. There's a really good potential for a road it's just that they won't cut the road until they've built the house.

Ed Anthony - Kathy, I would suggest that we put that they need to make it to meet fire restrictions now, that they can't build until they make the road to meet fire restrictions, whether they build it 5 years from now or whatever.

Kathy Clarich - And you are aware that it's a 4 year, that you need to do something within the 4 years or you have to start over again on the approval for that piece?

Marie Lyons - We have been aware of that and we will try to stay within that timeline, of course.

Kathy Clarich - Okay, does anybody else have any questions?

**No Proponent Testimony.**

**No Opponent Testimony.**

**Closed to Public Testimony.**

Kathy Clarich - Does staff have any comments for us?

Tatiana Burgess - My only... going off of what Ed said, we can definitely add a condition or modified proposed condition number 3. When we talk about the fire breaks that needed to be added we can include that regarding the access road that it needs to meet the fire code criteria. We could probably add something in that regard in the proposed conditions.

Kathy Clarich - Okay, thank you. Anybody else on the Planning Commission have any comments?

John Faw - That will need to be on both parcels, will it not? That they have adequate access. They've already talked about road maintenance agreement, which was great. The easement kind of.

Ed Anthony - Right, they've both got to meet the fire restrictions or they won't be able to build houses in there. They've got to be 20 feet wide.

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Tatiana Burgess - I can put something very particular to that. I can say that it has to be applicable to both proposed partition 1 and proposed partition 2.

Kathy Clarich - I guess I have one other question and I don't know if, Tatiana, if you can answer it or it has to be Eric but shouldn't really the applicant then Marie... shouldn't they have really been the applicant because Jacobson's not the one that is going to have both parcels?

Marie Lyons - I guess you're correct. We should have put our names also as an applicant.

Eric Evans - I'm not really sure that it really matters who the applicant is. They don't have to be a current owner of the property as long as they have permission from the property owner to be the applicant.

Tatiana Burgess - As long as there was consent and that's where we captured that consent on page 2 of the application for their signature that was our understanding.

Kathy Clarich - Okay, I was just making sure because Jacobson is not actually applying for the 2, it would be the Lyons Trust. Okay are there any other comments that anybody has?

Joshua Jacobson - I just want to point out that we did have a letter from the Adrian Fire District and also the County Road Department so they've both assessed the area and have kind of okayed it for their access.

Kathy Clarich - Okay but the County has an access that needs to be met to. In the letter from the Fire Protection he didn't really say what you have to do to meet their code.

Tatiana Burgess - I talked to the Fire Chief today, they're actually working on updating their criteria of that right now. He said it was presented to their board so in the future their letters will be more specific, this one was pretty broad.

Kathy Clarich - Well it's kind of important because it's going to up there against very burnable ground so we want to make sure a fire truck can get in their very easily.

***Ed Anthony made a motion to approve the staff report and findings of fact. John Faw seconded the motion which was unanimously approved by the Commissioners present.***

***Ed Anthony made a motion to approve two non-farm partitions with the amended conditions of approval. John Faw seconded the motion which was unanimously approved by the Commissioners present.***

***Ed Anthony made a motion to approve two non-farm dwellings with the amended conditions of approval. John Faw seconded the motion which was unanimously approved by the Commissioners present.***

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**NEW BUSINESS**

Applicant: Ashley Buckingham/Somewhere Out West, LLC  
9689 S US Hwy 95  
McDermitt, NV 89421

Owner of Record: Robert & Cheryl Mitchell  
PO Box 65  
McDermitt, NV 89421

***Conditional Use Permit for Commercial Activity in a Rural Service Center Zone. Planning Department File No. 2020-08-016.***

Kathy Clarich – Now is the time to hear the request for a conditional use permit for Commercial Activity in a Rural Service Center Zone for Ashley Buckingham/Somewhere Out West, LLC. Planning Department File No. 2020-08-016.

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. None.
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. None.
6. Do any members of the County Planning Commission have any ex parte communication, including any site visits, to disclose?
  - a. None.
7. Does anyone object to any members of the Malheur County Planning Commission hearing this application?
  - a. None.
8. Does anyone challenge the County Planning Commission’s jurisdiction to hear these matters?
  - a. None.

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 6-3F-3 (F) and 6-3G-4.

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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.

We will start with the staff report, Tatiana.

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

Tatiana Burgess - This is a conditional use permit for commercial activity in a rural service center zone, Planning Department file 2020-08-016. The owners of record are Robert and Cheryl Mitchell at PO Box 65, McDermitt, Nevada 89421. The applicant is Ashley Buckingham on behalf of Somewhere Out West, LLC, 9689 S US Hwy 95 in McDermitt, Nevada 89421. The proposal is for commercial activity, specifically, they are trying to have a coffee shop in there. This parcel is located on Tax Lot 400, Township 41 South, Range 43 East, Section 18; on the Assessors map 41S43E18; Malheur County reference number 12806. The property is currently zoned rural service center and its current size is 3.69 acres. It is being used for commercial as it had a shop in there previously. It's surrounded by exclusive range use to the north and the properties to the south are residential. It's been accessed via Highway 95 South. There is an existing sanitation system (septic system) on the property, however, for this particular use they are proposing that they will (INAUDIBLE) the existing customer restrooms out there. There have been no objections reported by the McDermitt Fire District. In regards to the zoning history, prior to the year of 2000 this property consisted of a total of 8.67 acres so the piece that we see directly east of the highway that was 4.9 acres had been segregated and formed a separate tax lot at that time. That's all I have.

Kathy Clarich - Okay. Thank you very much. So let's see, Ashley are you the one that's on the phone then with us?

**Applicant Testimony**

Ashley Buckingham - That is my community member Amorita. I'm on a computer. Tatiana recommended that we have someone speak so Amorita is on here.

Kathy Clarich - So, tell us your plan.

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Ashley Buckingham - So I have a one year lease currently with Rob and Cheryl Mitchell, they're the current owners. I want to bring something to the community and so we kind of need a place to gather and I've always wanted to do a coffee shop so now we're doing it. The shop used to already be a coffee shop type of building so it's more of like a drive-up/curbside thing and we will provide a few indoor seats but with Corona Virus that will be a challenge. We do have two outdoor entrance restrooms, female and male separated, and they're very nice. So the property is surrounded by about 40 yards of high quality gravel. And then my employee is living in the trailer house that you see on the property as well that we are also renting. So that's I guess kind of it. I don't know, whatever questions you guys have I'm happy to help.

Kathy Clarich - Okay. Does anybody on the Planning Commission have any questions for her?

Linda Simmons - I love the name.

Ashley Buckingham - Thank you.

Kathy Clarich - I love name to, I thought it was pretty cute.

John Faw - This may be an excuse, we'll have to go to McDermitt.

Ashley Buckingham - It happens to fall right on the Oregon side so thankfully Malheur County has been so amazing and we've enjoyed working with Tatiana and Eric. It's been a learning experience but I'm happy that you guys have the staff that you do because it's been easy.

John Faw - Isn't what she's doing already an approved use in these rural service centers?

Tatiana Burgess - So when I looked it up it wasn't for commercial activity specifically. I can identify really quick (I'm sorry I don't have the actual file with me right now) but it wasn't outright permitted, that's why we have to go through this, because it's considered commercial activity.

Eric Evans - So in rural service centers the actual permitted uses are single family dwellings, farm uses, publicly or privately owned parks (with exceptions), and residential homes. It's a conditional use to do commercial activities, including but not limited to, eat and drinking establishments. I inspected a coffee shop in this building several years ago, so it used to be one but over time you lose that conditional use, when you take that use away.

Tatiana Burgess - Under the conditional uses it's specifically outlined under item number 'F'. It says specifically commercial activity is the conditional use.

Kathy Clarich - Okay. Does anybody have any other questions? If not I will ask if there is anybody in favor of this action that would like to speak?

**Proponent Testimony.**

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Amorita Maher - We actually have a ranch not too far from McDermitt, we're on the Oregon side. I would hope that you would approve this simply because there isn't much left in McDermitt, even on the Nevada side, the casino has closed there so for the community it would be uplifting to have a place to stop for coffee. There's plenty of (INAUDIBLE) outside and around during the summertime where people could be outside with children and just have a place to get together. Right now there just isn't one, especially during winter months. In the summer there is the snack stop on the Nevada side but it's a totally different deal so this is very unique and it would be on the Oregon side. And of course, Malheur County would be collecting some taxes so it's a win win. So we're hopeful that you'll approve this and we will be having coffee there soon.

**No Opponent Testimony.**

**Closed to Public Testimony.**

Kathy Clarich - Staff comments please, Tatiana.

Tatiana Burgess - I don't have any. I did list it as a condition of approval that she will have to secure all of her license issued by the Oregon Health Authority represented by Environmental Health, Malheur County so she'll have to carry her annual license and renew every year when she chooses to operate so that's already listed as a condition.

Kathy Clarich - Okay, thank you very much. Is there any discussion among the Commission?

Linda Simmons - I have a question. I was looking under the proposed conditions and it says it's valid for 2 years. I thought they're normally valid for 4.

Eric Evans - That's only if... if it's residential in use then it's good for 4 years but every other conditional use is good for 2 years.

Ed Anthony - So will she have to reapply every 2 years?

Eric Evans - That doesn't mean she has to reapply. Once the use is established and as long as she's meeting all of her conditions the permit is valid. It's when she stops that use then it's no longer valid.

***Ed Anthony made a motion to approve the staff report and findings of fact. Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present.***

***Ed Anthony made a motion to approve a conditional use permit for commercial activity in a Rural Service Center zone. Linda Simmons seconded the motion which was unanimously approved by the Commissioners present.***

**NEW BUSINESS**

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Applicant: Obendorf Malheur Farms LLC  
24034 Batt Corner Road  
Parma, Idaho 83660

***Conditional use permit for one non-farm dwelling. Planning Department File No. 2020-08-019.***

Kathy Clarich – Now is the time to hear the request for a conditional use permit for one non-farm dwelling in exclusive farm use zone for applicant Obendorf Malheur Farms, LLC. Planning Department File No. 2020-08-019.

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. None.
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. None.
6. Do any members of the County Planning Commission have any ex parte communication, including any site visits, to disclose?
  - a. None.
7. Does anyone object to any members of the Malheur County Planning Commission hearing this application?
  - a. None.
8. Does anyone challenge the County Planning Commission’s jurisdiction to hear these matters?
  - a. None.

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: General Criteria to Evaluate Suitability; MCC 6-6-8-1: Specific Conditional Use Criteria Non-Resource Dwelling in EFU, ERU or EFFU Zones; MCC 6-3A-3: Allowance of Certain Uses; and OAR 660-033-130 (4)(a)(D): Agricultural Lands.

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We will start with the staff report, Tatiana.

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

Tatiana Burgess - Yes. This is the conditional use permit for one non-farm dwelling, Planning Department file 2020-08-019. The applicant is Obendorf Malheur Farms, LLC, at 24034 Batt Corner Road in Parma, Idaho 83660. The property is located on Tax Lot 202, Township 22 South, Range 47 East, Section 31; Assessor's Map 22S47E31; Malheur County reference number 20301. The property is zoned exclusive farm use and it is 42.44 acres. It is currently a bare lot and it has a lake on it that, evidentially, was an old gravel bed a long time ago. The parcel is currently entirely surround by properties that are being farmed and have farm dwellings on them. It will be accessed by Stateline Road on the eastern side of the parcel. A DEQ sanitation system will be required once development has occurred. The parcel is within Adrian Rural Fire Protection District and it currently has about 13.6 acres of water rights attached to it. The soils on this piece are class III and there is a very small portion that are class VII and IV soils. In regards to the zoning history this piece was involved in an action that happened in 2008. At that time there was a total of 6 Tax Lots that some of them have been consolidated and remain with the main farm. The current Tax Lots 202 and 201 have been partitioned for the non-farm partition/non-farm dwelling criteria that was planning action number 2008-03-005. Although the partition had been completed and it was executed on the partition plat number 08-06, recorded instrument number 2008-2449, the actual non-farm dwelling has never been constructed on this and the permit expired in April of 2012. The 'Farm Zone Clause' that we request to be recorded into the deed, that statement had been recorded and met the condition of the original conditional use permit, so that is currently in the title of the deed. Also, the farm disqualification penalty had been paid in April of 2008 and the property has been assessed at the real tax value starting with the 2009 tax year. So that has already been taken care of within the previous conditional use permit. I believe that is all I have.

Kathy Clarich - So this is which parcel then, of those that have been?

Tatiana Burgess - Eric, would you be able to zoom out a little bit until you capture Tax Lot 201 to the northeast. So the parent parcel was County Reference number 11007; Tax Lot 200 and that is the farm right now, that is shown on there (kind of where the curser is there on the map) and then up top in the northeast corner was the original non-farm partition (number 1) and then this one to the south (the 42 acres) was the non-farm partition (number 2) from that action.

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Kathy Clarich - Okay, so this is number 2 that we're looking at then?

Tatiana Burgess - Number 1 was completely executed and built on and everything at that time. This one was just partitioned off, it's on the partition plot but they failed to have it built on and there was never an extension requested or granted. The permit expired 8 years ago.

Kathy - Okay, thank you very much. Who is representing Obendorf Malheur Farms?

**Applicant Testimony**

Corey Cole - This, as Tatiana said very well, this application expired back in 2012 and the dwelling was not constructed. Pretty much between 2008 and 2012 there was a tough commodity year (our primary income is farm income) so resources that would have been otherwise sent build that dwelling were brought back to the farm to keep things going so we kind of took that off of the priority list and now I am doing the dreaded work of submitting the application for the second time to pretty much do the exact same thing that was done the first time with the first approval. This would be, again, just a dwelling on a piece of unproductive ground that is surrounded by ag production ground. As you've noticed, it's a little bit difficult to get to. It seems almost as if you're driving down a private driveway but you are actually on a county road and then that Stateline Road kind of ends and at the end of that Stateline Road there's an entrance to the property there on the right, which is on the west side. That's pretty much all there is. We are reupdating the application that was originally submitted back in 2008. We are in agreement and accepting of all the conditions of approval and that is all I have.

Kathy Clarich - Okay, so I'm looking at the map. You're going in from Napton road and...

Corey Cole - So if you're on Highway 19 it's easier to get there if you take, it's also called East Canyon Loop, it's the Stateline Road (right where that Stateline store is) you head south on that and then it kind of makes an S turn there going down that hill and crossing that canal and then it gets back in line with the Stateline. Where it takes a dogleg east into Idaho there's an entrance there to that property.

Kathy Clarich - And that road was already developed into that property, or not yet?

Corey Cole - That is the legal access, there's a locked gate there at that entrance. I believe our parcel line is actually on the north side of that ditch, runs on the north side of the property and that current ditch road can be utilized as well.

Kathy Clarich - Does anybody have any other questions for him?

Ed Anthony - So the road that you're going to access on, is it wide enough for fire department to get their trucks into that, the place where you're building your house?

Corey Cole - So the Stateline Road is, yes. We will be, as part of the conditions for approval, the access road to meet fire requirements we are in agreement with that and we will get that constructed adequately.

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Ed Anthony - Is it already in our conditions?

Corey Cole - Yes.

Kathy Clarich - So is this under the Homedale Road District then?

Corey Cole - We actually got our approval from Homedale Highway District, based on guidance working with Tatiana (who did an excellent job putting this application together).

Ed Anthony - But the Fire Department would come out of Adrian? Is that correct or not?

Corey Cole - I didn't hear your question.

Ed Anthony - Does the Fire Department come out of Homedale or Adrian? Since it's in Oregon, where would the Fire Department be coming from?

Corey Cole - We worked with the Adrian Fire Department. I'm trying to get a letter from them.

Tatiana Burgess - Regarding the road, if I may, this road has actually been dedicated. Eric pulled out... this is the recorded plat from 2008 when those partitions were executed so the road was actually (even Napton Road to the south) dedicated to go all the way down to the partition and the Stateline Road was supposed to be developed. Although the map had been created and it's registered with the State for some reason the work on the ground was never executed. So that is originally why we got the letter from the Homedale Highway District but in reality we'll be asking (INAUDIBLE) Stateline Road being a County road.

Eric Evans - And it will be addressed off of Stateline Road.

Kathy Clarich - Okay so then we actually should have something then from Malheur County because it says culvert required if not already in place on the Homedale one.

Tatiana Burgess - Correct and I've been working with Dave Tiffany, the County Road Master, on that and given the fact that they don't have it in their system yet, like I said, this was something that was done in 2008 and for some reason it was never captured. So I've been working with Dave Tiffany on this to get a statement from him as well.

Kathy Clarich - Okay, thank you. Does anybody have any more questions for them?

**No Proponent Testimony**

**No Opponent Testimony**

**Closed to Public Testimony**

Kathy Clarich - So, Staff Report on it?

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Tatiana Burgess - The only comment that I have, I did request a letter of comment from Oregon Department of Fish and Wildlife given the fact that there's a body of water on the property. I just didn't get that comment early enough to include it in your packets. But according to the Malheur District Biologist, Phillip Nilborn, and I'm going to quote, "It looks like that pond might be an old gravel pit. I looked at our significant habitat map and did not see anything so I don't have any comments on the proposed actions."

Kathy Clarich - Do we want anything under the proposed conditions about meeting the Malheur County road requirements since we don't have them?

Ed Anthony - I think we should.

John Faw - They weren't in the first application?

Tatiana Burgess - I'm sorry, what was that John?

John Faw - Wasn't that addressed in their application back in '08?

Eric Evans - It's potential that it was but because that conditional use permit expired, therefore those conditions are no longer applicable. So we would have to do brand new conditions to this anyways.

Tatiana Burgess - For conditions, in reference to the road, we're not necessarily done for this piece since it has never really been executed or developed. We can definitely add something in regards to the road. I can amend proposed condition number 2, saying that the access road needs to meet fire code requirements and Malheur County Road Department, if that's okay with you guys.

Kathy Clarich - Does anybody else have any comments or questions? If not then I'll entertain a motion.

***Ed Anthony made a motion to approve the staff report and findings of fact with the amended conditions of approval. Linda Simmons seconded the motion which was unanimously approved by the Commissioners present.***

***Ed Anthony made a motion to approve a conditional use permit for one non-farm dwelling. Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present.***

## NEW BUSINESS

Applicant: Vaughn and Jennifer Ellsworth  
5452 N Hickory Burr Place  
Boise, Idaho 83713

***Conditional Use Permit for two non-farm dwellings and two non-farm partitions. Planning Department File No. 2020-08-017.***

Kathy Clarich – Now is the time to hear the request for a conditional use permit for two non-farm dwellings and two non-farm partitions for applicants Vaughn and Jennifer Ellsworth. Planning Department File No. 2020-08-017.

The criteria for this application is the same as the second application we heard tonight.

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

Eric Evans - This is a conditional use application for two non-farm dwellings and two non-farm partitions. The applicant and the owner on record is Vaughn and Jennifer Ellsworth. Their address is 5452 North Hickory Burr Place, Boise, Idaho. The proposed property identification is Assessor's map 21 south 46 east 22, Tax Lot 800 and Malheur County reference number 10679. It is zoned exclusive... it's a split zone. It's zoned exclusive farm use and exclusive range use, CA1 and CA2. The parcel size is 81.10 acres. This particular piece of property has 42 acres of water rights and it's mostly just farmed with some range land on there as well. It's surrounded by farms with farm dwellings and BLM land. The access is via Highway 201 and Snively Gulch Road and possibly Emerald Slope Road (to the north) as well. A DEQ sanitation system would be required for each of the non-farm dwellings. This is also in the Adrian Rural Fire Protection District. We kept George busy this month writing us letters for the Rural Fire Protection District. I think it was a good month. We all learned a little bit about how to make sure we're doing this stuff right. This isn't in a flood plain or anything so there's really no natural hazards besides the wild fire/urban interface issues. Again, 42 acres of water rights. A lot of this is unmapped on NRCS but there is some class VI and class VIII soils on it. In 2007 this subject parcel was part of a series of property line adjustments. It originally started out to be 59.85 acres and the property line adjustments made it into the current 81.10 acres. That's all I've got.

Kathy Clarich - Okay so is Jennifer with us?

Jennifer Ellsworth - Vaughn and I both are here.

Kathy Clarich - Do you want to tell us what your plans are?

**Applicant Testimony**

Jennifer Ellsworth - Sure. We've owned this land for the last 8 years but we currently live about an hour away in Boise. We have some cows and horses out there now and we just really want to be able to be there and build a home out there so we can take better care of the land and our animals. We want to be able to divide off these two parcels. One would be for immediate building purposes for our home and the other would be to hold for a future time when our daughter might want to build something out there to. Both parcels, we placed them strategically, I know there are some concerns from our neighbors about where these are but to comply with all the regulations we put them where we have access roads. The southern lot being accessed by Snively Gulch Road and the northern parcel by Emerald Slope Road. When those boundary lines were realigned back in

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2007 our deed gives us access from Emerald Slope Road. We also have Derrick McCrola on the line. We've engaged his services to have him survey this for us, assuming this goes through. He's agreed, if we need to talk about some of these easements he has access to our deed and can testify as to how some of those easements work because we do have an easement through there to access that lot. I know you mentioned that you had tried to go through that lower road that goes over the old dump but that's actually not Snively Gulch Road, it would be the upper road. They kind of were both coming off 201 at the same spot but it's actually the upper road that would go up, is how we would access the home. We have talked to the fire department and George Martin a little bit about that. We've also been talking to people about how we can improve that road to make it more passable for us and for fire services. Also, both of those parcels are on range land and so that we don't encroach on any farm land use. The northern parcel, it looks on the map like it might be kind of close to a neighbor but when we measured it, it's about over 800' from any current neighbors so we shouldn't be encroaching on anybody else's area.

Kathy Clarich - Eric, could you take it out a little bit so we can see where 201 is? I was trying to see where she says there's 2 roads there for Snively Gulch.

Eric Evans - It's going to take a second. My internet for this thing is slow.

Jennifer Ellsworth - Right where the numbers 500 are, that's actually Snively Gulch Road, so that's the one that goes up. The one that you were talking about is just above that, it's a little skinnier and that's the one that goes through the old dump, which is George Martin's land. Right where 500 is coming off of 201 is how we would access. That's where the Road Master said the county road is actually Snively Gulch Road.

Kathy Clarich - That's the road I was talking about, it goes up a hill.

Jennifer Ellsworth - It's not the skinny road to the lower.

Clark Forsyth - Eric, can you run your cursor over where they're talking about on the map because it's hard to read on the computer here.

Eric Evans - I believe it comes in... I'm not sure if you guys can see. I've got two computers going here and the computer that everyone is looking on is slow and it doesn't move, it takes about five minutes to move. This one is a little quicker. I can't necessarily see what you guys are seeing and whether you're seeing it or not. I believe it comes across this 500 and dips down and goes into this way, is where Snively Gulch Road.

Vaughn Ellsworth - It comes through and then it cuts through the corner of our property, between us and George Martin and then as it turns onto that road it becomes part of the County Road District. So the first part is part of the Nyssa Road District and then it goes to the County.

Eric Evans - I'll try to get you guys something a little better here.

Kathy Clarich - I know when you put it in on your car it tells you that you have to get out and walk.

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Jennifer Ellsworth - Well we'll fix that. We don't want to have to walk up that hill every time.

Vaughn Ellsworth - It's actually a fairly busy road because that's the access to the BLM ground back behind. A lot of ATV traffic. A lot of horse traffic up there to, which has surprised me over the years.

Eric Evans - Okay. I think you guys can see my screen now, correct? That's a document provided by George Martin. Here in the room right now we also have George Martin, he is the owner of the sand lot property. He is also the same George Martin that is with the Adrian Fire Department as well. He provided this and it does show where that road goes through sand lot and access is through his property.

Kathy Clarich - It's not a County maintained. It's a County road but it's not County maintained, is that right?

Jennifer Ellsworth - Correct.

Kathy Clarich - Eric, I have a question that maybe you could answer for me. Since it's a County road, does it still have to meet fire code in order for there to be a residence up there?

Eric Evans - We can require they fix the road up in order to meet fire code, yes. It's the same thing that we did with Calico, just a little bit smaller scale.

Kathy Clarich - So they did not have to have an easement for that section that goes across the sand lot, is that right?

Eric Evans - As long as they're staying on the County road it's a public access road so they could... they would work with the road department. They're not going to just go out there and do work without talking to Dave about it. If they come off that road where it veers down south, if they want to go straight across there then they obviously need to secure an easement with Mr. Martin and a road maintenance agreement.

Kathy Clarich - While you're at it can you bring up where they were talking about coming in off of Emerald Slope?

Jennifer Ellsworth - I think this is where Derrick McKrolaa might be helpful to explain some of these easements because we have understanding but I think he has access to the deed and can explain how some of that works.

Derrick McKrolaa - This is Derrick McKrolaa, Land Surveyor.

Ed Anthony - We can't hear you.

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Derrick McKrola - (INAUDIBLE) from the County Clerk's office and Malheur County Surveyor's office. Emerald Slope Road is dedicated reaches Tax Lot 600. Tax Lot (INAUDIBLE) has a deed that is subject to (INAUDIBLE).

Eric Evans - Derrick, could you call in? We're having a hard time hearing, it's kind of cutting in and out.

Kathy Clarich - Okay. Is Tax Lot 600 part of this? It's not part of this 80 acres?

Jennifer Ellsworth - It's not. It's owned by Mike Ready.

Derrick McKrolaa - This is Derrick McKrolaa, can you hear me? The comment that I had for Snively Gulch Road is that I recognize that as a public road and for Emerald Slope Road, I recognize that from County records that that is a dedicated road to Tax Lot 600. Tax Lot 600 has a deed that was granted to them with a reservation from the grantors, the same grantors the applicants their land, and that deed is instrument number 2014-3894 and it describes a reservation to the grantor an easement for an ingress and egress over the lower 60' of that described property, Tax Lot 600. Those are the items that would support access to their proposed 2 acres there on the north side.

Kathy Clarich - Okay. You're saying the easement is on the north side of the (INAUDIBLE).

Eric Evans - Derrick, you're going to have turn your computer down. Go ahead Kathy, what was your question?

Kathy Clarich - My question was, the easement is on the north side of Tax Lot 600? This is not working.

Eric Evans - I love technology sometimes. Hey Derrick, somebody has like the computer and the phone on at the same time so we need to turn the volume down on one of them. Okay, are we good? Alright, let's try that Kathy.

Kathy Clarich - Okay. Derrick, are you saying that the easement is on the north side of Tax Lot 600?

Derrick McKrola - I'm sorry Kathy, what's your question?

Kathy Clarich - Is the easement on the north side of Tax Lot 600?

Derrick McKrola - There's a parent easement across Tax Lot 600 that comes in from Emerald Road.

Kathy Clarich - Okay, but the easement doesn't go right that (INAUDIBLE).

Derrick McKrola - Sorry Kathy, say that again.

Kathy Clarich - Where exactly does the easement go through at?

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Derrick McKrola - Where exactly is that road? It's the north 60 feet of that Tax Lot 600 as described in the deed. I'm not sure how that would work as far as constructing a road through there. I haven't seen the site.

Kathy Clarich - Okay, does anybody else have any questions?

Vaughn Ellsworth - When Mr. Ready bought that property, I talked to him about that easement. You can kind of see what looks like a road that goes straight up, basically into his driveway, and we talked about moving that more towards the yellow line and having to cut a road in there. That's where that would be done if that's where we have to do that at. Which would be the 60' from the north.

Kathy Clarich - Okay, so the easement doesn't go all the way through into Tax Lot 800 then?

Vaughn Ellsworth - It goes all the way to Tax Lot 800 but you can see how Tax Lot 800 surrounds 600 on 2 and a half sides so it goes towards the more northern part.

Ed Anthony - I've got a question to ask you. You've got an easement going through Ready's property right?

Jennifer Ellsworth - Correct.

Ed Anthony - You said you're going to move it 50' to make it a straighter...

Vaughn Ellsworth - No, we're going to follow the deed... my understanding was that it was to be the 60' from the north section.

Ed Anthony - Your easement is still going to be in the same spot that it's written up as, right? Because if you move it off the easements you've got now you lose your first easement because you don't have an easement where the second easement is going to be unless they agree to move the easement themselves.

Jennifer Ellsworth - We would use what is currently written up.

Ed Anthony - That was what I was trying to get at. Thank you.

Kathy Clarich - I was confused because Derrick was saying it was the north 60'. I think that's farther than 60' from the north to the south of that Tax Lot 600.

Jennifer Ellsworth - I think it's confusing looking on the map because it's a really steep hill, it goes downhill to us.

Kathy Clarich - Does anybody else have any questions for them? I'm going to ask if there's anybody in favor? Is there anybody in opposition to this action.

**No Proponent Testimony**

**Opponent Testimony**

Tim Martin - My name is Tim Martin. I'm the current property owner of 916 Emerald Slope Road. On behalf of the neighboring property owners we turned in a letter of opposition. We would first like to go on the record stating, we're not opposed the Ellsworth's building a house on the property. What we're really opposed to, based on our understanding of the conditions to permit, is that property on the north side, that 2 acres that they're proposing on the north side. For multiple reasons discerned in the letter, I won't go through all the reasons, but I think one of them that which has been discussed much tonight is the access onto that property. I realize what they surveyor gentlemen said there, I would like to go on the record that I believe that is not the case. In recognition of the Nyssa Road District, they recognize Emerald Slope road as stopping on (INAUDIBLE) and not extending through to that Tax Lot 600. As they may have easement across Tax Lot 600 they do not have an easement across the 916 Emerald Slope Road property. There was a previous easement that was granted, I understand it in 2007, with the instrument number 2007-(INAUDIBLE) that was recorded December 4, 2007. I would like someone to investigate that to understand and see how that might impact the (INAUDIBLE) across our property. Again, we're all trying to be very supportive of what they're doing, it's just with the location of that 2 acre lot on the north side, as they stated, they are within the 800' boundaries, everyone understands they are falling within the guidelines. There's nothing from a legal stand point that's there it's more to opposition in the neighborhood that we can kind of resolve the access site.

Kathy Clarich - Is there anybody else that would like to speak in opposition?

George Martin - This is George Martin, with the Sandlot, LLC, address 2079 Highway 201, Adrian, Oregon. I'll go on record as somewhere between proponent and opponent. I just have some concerns from that Sandlot, LLC side I need to clarify the Snively Gulch Road access that the County believes that they have across it, I don't deny that they do but it's not currently useable. I also would like to go on record that my belief is if they are going to use that for access to this parcel I would like them to secure a legal access from Sandlot, LLC for one or both, including the location of that and the maintenance of it. It does bring up a question with the legal access to these parcels with the previous boundary line adjustments and stuff that were done on this. It was not provided access off of Snively Gulch Road to these parcels at that time, if I understand right. So I believe there is some issue there that I would like to see resolved from my stand point. I think that you answered that earlier, that it would be subject to the Oregon Fire Code, possibly Appendix D requirements. They were not provided from the Fire Department but I heard it brought up earlier in the meeting tonight.

Kathy Clarich - Thank you.

Jennifer Ellsworth - Can he repeat, what did he say wasn't provided?

Kathy Clarich - The fire code, Oregon Fire Code.

Jennifer Ellsworth - Was that the letter he wrote for us?

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George Martin - Well from the Adrian Fire Department has a very limited response to this for the Planning Commission. Their previous meeting, last Tuesday, they are currently in the process of updating their requirements. I believe it is going to fit within the law of the State of Oregon and the County's requirements but it was brought to our attention since the letter from the Fire Department was given to them that we needed to update that. So we are currently in the process of that.

Eric Evans - Kathy, if I could, if they do use Snively and Snively is not brought up to any kind of standards at all, my recommendation would be that they bring it up to whatever standards our County Engineer requires it to be. So they would need some kind of a permit and they may require it be engineered or brought up to whatever standard our County Engineer wants it to be brought up to.

Kathy Clarich - Okay. Is there any other comments for or against this application? If not, Eric I have a question on this, I'm thinking that we have too many questions yet that need to be answered. I was wondering if there's a way we could hold it over?

Eric Evans - Yeah, you guys can do a continuance. It would be a continuance to a date and time certain. That just helps me and I don't have to notice it. We would determine that if you guys want to do it next month, that would be my suggestion and at the appropriate time.

Kathy Clarich - Okay and if we did that we would leave it open to the public?

Eric Evans - Yes.

Kathy Clarich - What does the rest of the Planning Commission think?

Ed Anthony - Kathy, what are your concerns other than, is it the easements on the roads or maintenance of the roads, or what?

Kathy Clarich - My concerns easements on the roads, the road itself, the fire code and there's just too many questions yet that I think need to be answered. I think it would be nice to see a copy of the deed, if there is such a deed and the other deed that they were talking about which they said didn't think Emerald Slope Road went as far.

Clark Forsyth - Just a quick question on that the lower road cutting across the Sandlot property. Did I hear that the road is already being used or I'm a little confused on in didn't somebody say that's access to BLM land?

Eric Evans - So that road is a public road but it's not maintained or it's not built to any standards. What I'm saying is that it may need to be brought up to County standards and it be an engineered road at the expense of the Ellsworth's. That would be determined by our County Engineer and our County Road Master.

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Clark Forsyth - So just so I understand what you're thinking there, that these folks will have to maintain that road when they didn't own it or I guess I'm a little confused on that.

Eric Evans - No, they would have to bring it up the standard.

Ed Anthony - And then the County would maintain it?

Eric Evans - And then I don't want to speak to the County maintaining it at that time.

Ed Anthony - Possibly?

Eric Evans - I'm not going to speak to our Road Master... but they may have to maintain it themselves too. It's going to be kind of their access road. There's the other part about that is that there's a little confusion on where that County road is that goes through Sandlot and where it turns and the possibility that they're coming off of Snively Gulch Road on the Sandlot property. If that's the case then that section where they're utilizing Sandlot, they would need to secure an easement.

Clark Forsyth - Otherwise they'd have to drop straight south down to where it bends back into their property.

Eric Evans - Yeah, exactly and then go... yeah.

Ed Anthony - So I'm going to suggest that we have a continuance on this until these areas are ratified or okayed with both parties. All the parties need to get together, I think, and sit down and discuss what needs to be done before we can vote on this so we know what's going on. You need to get the County involved, you need to get both parties involved and they need to get this worked out before they bring it back to us. That's just my recommendation.

Kathy Clarich - I'm going for a continuance but it's up to the rest of you guys, what you think.

Clark Forsyth - John, have you been out there before, John Faw?

John Faw - Actually I have a lot of knowledge on this place. I really need to recuse myself from the vote on this because I have rather extensive knowledge on this property. I've sold it for Rosemary Sneringer to the Ready's and also to the Ellsworth's. I was instrumental in creating the northern easement and we investigated the Snively Gulch road at that time as well. I have personal contact and relationship with the Ellsworth's professionally and as well as personally. So unfortunately I'm going to have to recuse myself from a vote on this but I am a good source of information.

Jennifer Ellsworth - Kathy, is it okay if I ask a question about these easements.

Kathy Clarich - No, we still need to have it in our packet on the easements. What Derrick has come up with is one deed and somebody else has another deed.

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Jennifer Ellsworth - Our deed says we have access to all of Emerald Slope Road to get to our property and at that time Snively Gulch Road wasn't an access road for the property. So it's my understanding it is that them selling it now means our property is landlocked because that deed with that access just disappeared. Is that how an easement works?

Kathy Clarich - See and I don't have any of that in front of me because we weren't given any of that so I can't tell you exactly what has happened from one to another.

Linda Simmons - Kathy, this is Linda, I think we have enough information to make a motion for a continuance.

***Linda Simmons made a motion to continue the hearing to October 22, 2021. Ed Anthony seconded the motion which was unanimously approved by the Commissioners present.***

Eric Evans - I just want to reiterate, October 22nd at 7:30.

There being no further business to come before the Malheur County Planning Commission, the meeting was adjourned.

Respectfully submitted, Kelsey Sullivan.

Minutes approved by:

Name: Kathy Clarich Date: 4-2-2021