

Malheur County Planning Commission

The City of Nyssa Planning Commission Meeting was held remotely, via GoToMeeting, on January 28, 2021. Jim Maret called the meeting to order at 7:34 p.m.

CITY OF NYSSA COMMISSION MEMBERS PRESENT:

Doug Dewar
Corey Ramirez
Amy Martinez
Harry Flock
Kathy Flanders
Liz Haun
Richard Beck

Jim Maret, City Manager

The Malheur County Planning Commission Meeting was held remotely, via GoToMeeting, on January 28, 2021. 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
Chad Gerulf
Teresa Ballard

PLANNING DEPARTMENT STAFF MEMBERS:

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

OLD BUSINESS

Applicant: Malheur County Development Corporation (MCDC)
Grant Kitamura, Chair
522 SW 4th Avenue
Ontario, Oregon 97914

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Property Owner: Malheur County, Oregon
Dan Joyce, County Judge
251 B Street West, #5
Vale, Oregon 97918

Application for Preliminary Arcadia Industrial Park Subdivision Plat for Treasure Valley Reload Center (TVRC), Industrial Park and Farm Land. Planning Department File 2020-011-001.

Eric Evans - Just to catch everybody up with the Arcadia Subdivision, now that we're all called to order, we received a request from the Froers' counsel (I believe Allison is on right now) for a continuance, so they've requested an additional continuance. I reached out to the applicant and they have also stipulated to the continuance. They also allowed us to extend the 150 days, as well, to May 13. So the proposal tonight would be for you guys to continue to a date and time certain, February 25th at 7:30 P.M. If there's anybody.... we can have a little bit of testimony if you'd like over this or we can go straight into deliberation. Nyssa, do you guys have any questions about this?

Jim Maret - Is this regarding the reload?

Eric Evans - Yes and the continuance... and requesting a continuance until February 25th at 7:30.

Jim Maret - That's fine.

Eric Evans - And what about Malheur County, are we good with that?

Ed Anthony - I'm good with it. Do you want to make a motion on it?

Eric Evans - Yeah. So let's start with Nyssa. I'll have your chair get a motion and a second and a roll call vote.

Doug Dewar made a motion to continue to the hearing for the Application for Preliminary Arcadia Industrial Park Subdivision Plat for Treasure Valley Reload Center (TVRC), Industrial Park and Farm Land, Planning Department File 2020-011-001, to February 25th at 7:30. The motion which was unanimously approved by the Nyssa Planning and Zoning Commissioners present.

Ed Anthony made a motion to continue to the hearing for the Application for Preliminary Arcadia Industrial Park Subdivision Plat for Treasure Valley Reload Center (TVRC), Industrial Park and Farm Land, Planning Department File 2020-011-001, to February 25th at 7:30. Linda Simmons seconded the motion which was unanimously approved by the Commissioners present.

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NEW BUSINESS

Applicant: Anchorman Properties, LLC.

Owner of Record: Marc & Tamara Bybee

Application to Amend the Nyssa Urban Growth Area (UGA) and zone change from Nyssa UGA (N-R2/UGA-R) to Nyssa UGA (C-A1/UGA-C). Planning Department File No. 2020-10-011.

Jim Maret - Nyssa City Planning Commission will go ahead and open this at 7:40 P.M.

Kathy Clarich – The Malheur County Planning Commission will open this hearing at 7:41 P.M. to hear the application for Anchorman Properties, LLC.

Eric Evans - Now is the time to hear the proposed amendment to the Nyssa Urban Growth Area to include property commonly identified as Map 19S47E32 Tax Lot 1000 and amend the zoning N-R2/UGA-R to N-C/UGA. There is not podium, we don't have to sign in.

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.
1. Do any members of the Nyssa Planning Commission or County Planning Commission need to abstain?
 - a. Teresa Ballard abstains.
2. Do any members of the Nyssa Planning Commission or Malheur County Planning Commission have any conflicts to disclose?
 - a. None.
3. Do any members of the Nyssa Planning Commission or Malheur County Planning Commission have any bias to disclose?
 - a. None.
4. Do any members of the Nyssa Planning Commission or Malheur County Planning Commission have any ex parte communication, including any site visits, to disclose?
 - a. None.
5. Does anyone object to any members of the Nyssa Planning Commission or Malheur County Planning Commission hearing this application?
 - a. There are no objections.
6. Does anyone challenge the Nyssa Planning Commission or Malheur County Planning Commission's jurisdiction to hear these matters?
 - a. There are no challenges.

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Land Use Statement for the record: Oregon Land Use law requires several items be read into the record at the beginning of this hearing. I will now read these items.

The Applicable Substantive Criteria upon which the application will be decided are found in Oregon State Laws and Rules as well as local code provisions which are specifically set out in the staff report and include: Malheur County Code 6-10-7: Joint Management Agreement between the City of Nyssa and Malheur County, Nyssa Municipal Code 9-4E and 9-4F, and Statewide Planning Goals 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and the respective Administrative Rules.

Testimony, arguments and evidence presented must be directed toward these approval criteria or other criteria in State law, the Malheur County Comprehensive Plan, the Malheur County Code or the Nyssa Municipal 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 to raise an issue may preclude raising it before LUBA.

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.

The applicant will be allocated up to 20 minutes for initial applicant presentation. The applicant may also present up to 10 minutes for final rebuttal. All others wishing to testify will be given 5 minutes each. Myself, the Planning Director, Eric Evans, will provide the staff report for the County and the City of Nyssa. Again, 20 minutes for the applicant. At 5 minutes we'll call for testimony in favor or proponents and then testimony in opposition (or opponents) for 5 minutes each and then we'll call for any public agency testimony for 5 minutes each. We'll provide a staff summary and recommendation and then the applicant will have 10 minutes for the proponent rebuttal. At that time, we'll close the public hearing and have deliberations and then entertain any motions for each respective planning commission.

That was a lot. Does anybody have any questions for me, real quick, before I get into the staff report?

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

Again, the applicant is requesting an amendment to the Nyssa zoning map in order accommodate a onion storage facility. The owners of the property are Anchorman Properties, LLC, owned by Marc and Tamara Bybee. The current use of the property is storage buildings and chemical

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tanks. It is zoned Nyssa R-2/UGA, so it's in the Urban Growth Area. What the planning commissions will be doing tonight is voting on a recommendation to their respective governing bodies, to either the Nyssa City Council or the Malheur County Court. The Bybee's currently operate the ag packing business on surrounding lots that are zoned Nyssa Commercial and Nyssa Industrial. As part of those businesses, the Bybee's employ up to 30 individuals, all residents of Nyssa and the surrounding area. It is the intent of the Bybee's to extend their business operations into the surround land they own. They Bybee's have begun that process to initiate a zone change on several other lots that were in front of Nyssa and then also Tax 1000, which is subject to the joint management agreement because it is in the UGA. The Bybee's would like to improve the structures currently existing on Tax Lot 1000. It currently has 2 storage structures and multiple chemical storage tanks. The intent of the Bybee's is to improve and rebuild the existing structures which would allow for additional onion storage to assist in their various business operations.

Currently it's surrounded by commercial structures. Even though it's zoned residential it hasn't previously been used for residential. The subject property is bordered on the east by light industrial property and neighborhood commercial property directly across Commercial Avenue and then the property to the west is used for crops and ag purposes.

It's being proposed the property will be rezoned from Nyssa UGA Residential to Nyssa UGA Commercial in order to accommodate the storage facilities. I think that's where I will stop and entertain any questions if anybody has anything up to this point. Hearing none, I will hand the floor over to either Wyatt or Mr. Bybee, that is going to do the applicant testimony.

Applicant Testimony

Wyatt Baum - This is Wyatt Baum, for those of you who don't have a camera. I'll be providing some of the additional applicant testimony but I'll turn the camera to Mr. Bybee also. I want to stop and thank everybody and know that I appreciate your time this evening to hear this. I know for the City of Nyssa some of this is going to sound familiar to the conversation that occurred two weeks ago this evening.

Essentially.... Well I guess to start, we provided the County with some exhibits. The intent of that is so that the folks can kind of see what property the Anchormans Properties owns and where the building is going to go that is proposed on Tax Lot 1000. I don't know if those were distributed or if anybody had time to look at those, it's Exhibit 101 and Exhibit 102, and essentially the property that's outlined in blue, those properties are owned by Anchorman Properties, which is the... my client's the Bybee's are the principle owners of that entity. The properties outlined in green are Fiesta Farms, that's not before you tonight but I just wanted to give everybody an understanding of what the property ownership looked like. Exhibit 102 shows the proposed placement of the building on lot 1000. Tax Lot 1000 is the blue tax lot at the bottom of the page and it would be right off Commercial Avenue and it has a building intact. In Exhibit 102 it shows where the Bybee's would propose to construct a new storage facility for the business. So the Bybee's are long time residents of Malheur County and the Nyssa area and as Mr. Evans pointed out their business currently provides full time employment for roughly 30 individuals who live either in Nyssa or the surrounding area. Their proposal for expanding would allow them to grow their business, provide more family wage jobs for individuals.

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There's a couple of the goals that we have to go through for a land use plan to be decided by this joint commission and I just wanted to touch on 2 of those goals that we believe are probably most important and most relevant and pertinent to everybody's concerns and that's Goal 9, which is the Economic Development Goal and Goal 10, which is the Housing Goal. To kind of go along with this, back in 2018 Malheur County passed Ordinance 217... Oh perfect, I see Mr. Evan's did provide a shared screen to show the map that I provided and this is Exhibit 102. I just wanted to point out that the bottom blue parcel down by the cursor, that is Tax Lot 1000 and that is what the Bybee's are proposing to construct there. Going back to my statement, back in 2018 Malheur County passed Ordinance 217 and that was essentially an Ordinance that was done to add additional properties to Nyssa UGB, it was also before the joint session as we are tonight and I believe the meeting was September 25, 2018. What's important there is that the County and the City engaged an individual to provide various findings and do various studies for the City and the County to look at various issues, these roughly 16 goals, through the State and this individual focused in on economics and housing. The findings became part of the record, as they were adopted and I just kind of want to reference some of these findings real quick for the joint commission to give some understanding that this issue has been before this commission before in the past. The Bybee's in their attempt to grow their business are trying to rectify some of these goals that were addressed through these prior hearings.

So the first one I've got is Goal 9, this is the Economic Development Goal and the staff report provided states, 'The Bybee's initially attempted this zone change in 2019. As part of that process their focus was increase their business to the benefit of the City and surround area and also themselves. As I've mentioned, the Bybee's currently have roughly 30 full time employees between Anchorman Properties, LLC and Fiesta Farms. Some of those employees are seasonal. The proposed zone change would allow them to build additional storage sheds for their produce on the land. This would allow them to increase production and hire more employees.' The Bybee's have received support from both the Malheur County Economic Development and also Regional Solutions from Governor Brown's office in support of these proposed changes. That's partially because of the current economic conditions in southeastern Oregon. One of the issues that I wanted to point out was, back in that 2018 ordinance and the 2018 findings I referenced from September 25th, there were some findings that were made that there has been several agricultural processing warehouse and distribution firms that have moved their operations to Idaho. There's essentially been what's been referred to as out-migration of many of these industries and that has in some ways economically depressed that area. The proposal that the Bybee's are providing and presenting tonight would allow for continued economic growth in the Nyssa and surrounding areas. I guess essentially permitting this change would address that out-migration.

Then we come to Goal 10, which is Housing. Goal 10 is a pretty important goal because the State is very invested in making sure that there is affordable housing for residents in the State of Oregon. There are a couple issues that we put into the staff report, provided to Mr. Evan's to put in the staff report to essentially indicate where we are with the housing use in the city. One of the issues is in looking at the US Census Bureau data, it reflects slow residential growth in Nyssa. And actually, it is currently starting a receding/decline population over the past 10 years. According to the US Census Bureau the population of Nyssa in 2018 was roughly 3,175 people. In 2015, it was 3189 people. In 2010, it was 3240. So we're seeing this steady decline. Though

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this change is not significant it does show a downward trend in alleviating some of the need for residential housing in this area. At the time that the Comprehensive Plan was developed for this area, the population growth for Nyssa was expected to increase to 5155 people by the year 2000. That plan was based on a number that came to fruition and they estimated an additional need for about 764 housing units to be made available. 20 years beyond this projected date, not only has the city not reached the population projection but the population has declined. The plan the city implemented took into consideration the projected growth and provided for the potential growth of the existing zoning UGB based on the above the proposed change would have little to no affect. Going back to those findings that were proposed in 2018, the City and the County adopted the following findings (I think these findings are very important for everybody to listen to) the City and County stated that, 'Nyssa has not substantially since the Comprehensive Plan was adopted in 1982 and is forecast to lose population in the future due to out-migration. To reverse the downward trend in population growth, Nyssa is committed to bringing new jobs to the community. The Treasure Valley Reload Center Industrial Park provides an unprecedented opportunity to achieve this objective. Although there is more than enough buildable residential land within the Nyssa UGA to accommodate planned population growth, Nyssa is committed to retaining a substantial residential land supply to provide the opportunity for future residential development.' So essentially, the City went on to say that the City found, back in 2018, that there were at least 165 more buildable acres than needed to accommodate the residential needs over the next 20 years. So 2 years ago, and the population has declined since then, but 2 years about the City and the County found that there was a surplus of more than 165 buildable acres than what the City needed at that time. Since that time the City has allowed some development, and I know that that was kind of geared towards (to some respect) that Treasure Valley Reload Center Industrial Park, but the property that my client is proposing to develop is property that is surrounded by either commercial, residential commercial property, light industrial property or agricultural property and it's sitting on a road called Commercial Avenue which was intended to be a commercial hub, with the railroad running behind it. The City also recently converted a UGB commercial land to a residential UGB land and allowed residential development on that via the variance process Matt had us deinventory the residential loss from the City. The City currently provides for an inventory of housing in areas for essential development and what the proposal is this evening is to allow a continued use of a piece of property that has been used for commercial purposes in the past but needs to be changed to the correct zone to allow my client to go through the process of approving the structures on the property. Right now, as it's zoned, he would not be able to apply for the necessary permits because it's zoned residential but with this change it would allow my client to develop the property for its intended use without really affecting residential buildable lot in the area as this lot is bound in on all side by agricultural industry and commercial property. So, our request tonight is just that you approve the proposal for my client to have this Zone change for UGB residential to UGB commercial to allow this development and allow this business to continue to grow and hopefully cut down on some of the out-migration that's occurring in Nyssa. I'll turn the time over to Mr. Bybee.

Eric Evans instructing Mr. Bybee on how to call into the meeting due to audio issues.

Marc Bybee - I'll just be brief. Most of what (INAUDIBLE 21:18:08) so I don't want to be too long but I definitely appreciate the Planning and Zoning taking the time to get this on their agenda, I know that's difficult at times. I definitely look at this as a potential project which I feel

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is good for the City and the County. It's property which it really makes no sense for houses to be on. That I don't feel is self serving, that's just the truth. I think it's a good project. I think it supports the Reload Center. It supports my growers. I just see nothing negative about it. I will save the rest of my time as we go on in the discussion but thank you for looking at it.

Eric Evans giving instruction re: muting audio during proceeding.

Eric Evans - The next thing we'll do is ask for any testimony in favor or any proponents to this application?

Proponent Testimony.

Teresa Ballard - 501 S 9th Street, Nyssa, Oregon 97913.

My home is a property adjacent to the property that's owned by Bybee's and just up the street from this Tax Lot 1000. The materials we received stated that notices were sent out but I received no notice regarding this and would not have known about the action if it weren't for my being a member of the Planning and Zoning Commission. I'm in favor of the change for this based upon the fact that this has been traditionally used as really a commercial and industrial site by the Nyssa Coop. There has been traffic that was generated by the Coop over the years. We've had cars side swiped by the Coop and a number of things there. 9th Street faced down to that spot, I don't perceive... well there is impact to 9th Street which is a residential feeder that comes past the school and off King down to 9th and then down to Commercial. It doesn't seem to me that this is going to increase perceptibly traffic. Now, in recent City discussion, one of the kerfuffle's that we have with (unfortunately) the Bybee's long range plans is that the access to the property that they plan to develop are really hampered by the current traffic access. It would be my hope that with the City and with the County together that there could be some plan developed and something initiated to make a better access, both for the farmers and the truckers that come into to town and pick up onions. One further comment that I would like to make is that those onion storage sheds that would be on that property will generate some fan noise and if the Bybee's could be benevolent enough to consider putting their fans to the south, rather than to the north, I think it would make the neighbor a lot more congenial to their activities. I know that this is just a zone change for that Lot 1000 and I would like to say that my husband and I would be in favor of that action because I think it will further the Bybee's business and it'd be a good thing for the City. Thank you.

Eric Evans - Thank you very much Teresa. Do I have any other testimony in favor, any more proponent testimony? Again, if you're calling in (it doesn't really look like we have a lot of people calling in) *6 is what's going to mute and unmute yourself, if you're on the phone. Okay, we'll move on. Do I have any testimony in opposition, any opponents to this?

No Opponent Testimony.

No Public Agency Testimony.

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Eric Evans - I will continue on. I will give you the summary again. We're looking at a pretty simple rezone, it's .87 acres. Our job here tonight is to make a recommendation. The Nyssa Planning Commission will be making a recommendation to the Nyssa City Counsel. Malheur County Planning Commission will be making a recommendation and adopting and (of course) accepting into the record the staff report and all the supporting documentation. I'll be honest, when we were working on things like the reload, we drive across the Snake River and see some of those beautiful facilities that they've built for onion storages on the other side of the Snake River. I like to see businesses stay here and my staff recommendation would be to for both planning commissions to recommend that this be approved. That being said, I would entertain any applicant rebuttal or proponent rebuttal, Wyatt or Mr. Bybee.

Wyatt Baum - This is Wyatt Baum, I don't have any rebuttals with no opponents providing any testimony but I don't know if Mr. Bybee has anything he wants to say.

Mr. Bybee - I have nothing.

Eric Evans - Thank you very much. Okay, lastly, we will start with Malheur County. Kathy, if you can go ahead close your hearing and Nyssa, we can close your hearing as well.

Kathy Clarich - Okay, thank you. Does anybody on the Malheur Planning Commission that need any further discussion on this matter? If not, then I need somebody to make a motion. There was 2 motions listed on page 9 if you need to have it written out for you.

Ed Anthony made a motion to accept and approve the findings of fact as set forth in the County Planning Action 2020-10-011 based on the information, findings and conclusions set forth in the staff report. John Faw seconded the motion which was unanimously approved by the Commissioners present.

Ed Anthony made a motion to approve the zone change from Nyssa N-R2/UGB to Nyssa N-C/UGB to include a portion of property commonly identified as Map19S4732CB TL 1000 thereby amending the Nyssa Urban Growth Area/Boundary (UGA/UGB), as set forth in the County Planning Action 2020-10-011 be approved, based on the information, findings and conclusions set forth in the staff report and adoptions of Malheur County Ordinance No. 226. Linda Simmons seconded the motion which was unanimously approved by the Commissioners present.

Kathy Clarich - That does it for the Malheur County Planning on this motion.

Eric Evans - Okay, I will move to the City of Nyssa and we'll kind of go through that same procedure if you guys would like.

Amy Martinez made a motion to move the Malheur County Court to accept and approve the findings of facts as set forth in County Planning

Action 2020-10-011 based on the information, findings and conclusions set forth in the staff report. Corey Ramirez seconded the motion which was unanimously approved by the Commissioners present.

Amy Martinez made a motion to move that the request for a zone change from Nyssa N-R2/UGB to Nyssa N-C/UGB to include a portion of property commonly identified as Map 19S4732CB TL 1000 thereby amending the Nyssa Urban Growth Area/Boundary (UGA/UGB), as set forth in County Planning Action 2020-10-011 be approved, based on the information, findings and conclusions set forth in the staff report, and adoption of Malheur County Ordinance No. 226. Doug Dewar seconded the motion which was unanimously approved by the Commissioners present.

NEW BUSINESS

Applicant: Smartlink on B/O New Cingular Wireless, PCS, LLC
11232 120th Avenue NE #204
Kirkland, WA 98033

Owner: Oregon Department of State Lands
775 Summer St. NE, Ste. 100
Salem, OR 97301

Conditional use application for a Wireless Telecommunication Facility and Sage-Grouse Rule Permit. Planning Department File No. 2021-01-003.

Kathy Clarich – Now is the time to hear the request for a conditional use permit variance and for a sage-grouse rule permit for a 449' (previously 450') wireless telecommunication tower for applicant New Cingular Wire, PCS, LLC. Planning Department File No. 2021-01-003.

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?

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- 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: Specific Criteria to Evaluate Suitability; MCC 6-6-8-8 Wireless Telecommunication Facilities; Malheur County Comprehensive Plan Goal 3: Agricultural Lands (Policies 1,2 and 6-8); Goal 5: Open Space, Scenic and Historic Areas and Natural Resources - Fish and Wildlife Habitat (Policy 2) and Water Resources (Policy 4); Goal 11: Public Facilities and Services - Fire and Police Protection (Policy 2); Sage Grouse Rule Permit OAR 660-023-0115.

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.

We will start with the staff report from Eric and then the applicant will have 20 minutes and then testimony in favor will get 5 minutes each, testimony in opposition 5 minutes each, staff comments if any, applicant rebuttal for 10 minutes and then the hearing will be closed. It's your to do with as you want, Eric.

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

Eric Evans - The proposed action is a conditional use permit for the approval of an unmanned wireless telecommunication facility consisting of originally what was going to be a 450' guyed

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tower but it's 449', we lost 1 whole foot. Applicants also request... it's good to point out that this is also under the sage-grouse rule as well. I will commend Debbie and her team, they called me one day about this process and I threw sage grouse at them and she probably knows more about the sage grouse than she ever thought she would. They have worked very hard with ODFW to get something going with this. The property is Tax Lot 100, T28S R47E 31, Map number 28S37E, Malheur County Reference number 15740. It's north of Burns Junction on Highway 78. It's zoned exclusive range use or C-A2. It's on a 5,301.04 acre parcel which is owned by the Oregon Department of State Lands. The access is going to be on a private access drive originating off of Highway 78. No sanitation will be required. It's not within a fire district. There are no natural hazards noted, no water right issues and there's no relevant zoning history of this piece of property.

One thing I do want to note that we did not get to you, I would direct you to Exhibit 3, the January 20th email and subsequent letter provided by the Oregon Department of Fish and Wildlife and their Sage Grouse mitigation coordinator, Nigel Sitel. He does have some proposed conditions, one being: the current mitigation plan shall be finalized with by the applicant in consultation with and approved by the Department prior to project construction, number 2: the applicant shall provide mitigation as agreed to in the mitigation plan, number 3: minimization measures outlined in the mitigation plan shall be utilized and maintained through the construction operation and decommissioning phases of the project, and number 4: the project shall be removed upon decommissioning and any disturbed area shall be reclaimed to standards identified in the mitigation plan.

It would be my proposal when we adopt the staff report, we modify the recommended conditions or the proposed conditions to include those conditions as well. That is all I have for now.

Kathy Clarich - Debbie are you the one that's going to be presenting?

Applicant Testimony

Debbie Griffin - Well I want to say good evening and thank you for our meeting tonight to hear AT&T's application for the proposed facility. My name is Debbie Griffin and I work for Smartlink. Smartlink's address is 11232 120th Ave NE, Suite 204, Kirkland, Washington 98033. I was wondering if I would be able to share my screen to show my presentation?

Kathy Clarich - I don't have a problem with that.

Eric Evans - There you go, sorry I knew that and I forgot.

Debbie Griffin - That's okay but I need your help in telling me... I need to know if you can see the presentation screen? Can you see that? As Eric said, this is located on... this will be a 2500 square foot area located on a 5,300 acre parcel that is currently undeveloped and it is zoned exclusive range use. This is an aerial view of the tower and this is the overall parcel that the Oregon Department of State Lands owns. The tower is proposed to be a 449' guyed tower with AT&T 4G LTE technology. We will have up to 12 panel antennas, 24 remote radio head units, 2 microwave antennas that are shown on the bottom portion of the tower and 2 surge protectors

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and there will also be a tower light on top for FAA requirements. This is an overall footprint of the tower, showing where the guyed anchors will be located. They will be buried and they will be secured within a 15 x 20 fenced leased area. The tower, the antennas and all the accessory equipment be painted non-reflective paint for FAA requirements and it will be structurally designed to allow for a future co-location at a minimum of two additional users. The tower and equipment will be located within a 50x50 foot leased area that will be covered in gravel, it will be enclosed by a 6' chain-link fence with barbed-wire and it will be accessed via a locked gate. There will be a parking and turn around area that the cellular technician will be able to utilize approximately one time a month for maintenance and inspection to make sure that everything is working properly out there on site. The ground equipment will be located within a locking cabinet which will be approximately 10' 9" x 10' 9" on a concrete slab. There will also be a diesel generator that will be used for emergency backup power. AT&T service objective is to provide new dominant 4G LTE technology within the targeted service area, shown in yellow. It will provide coverage along Highway 78 and will extend north towards Burns and Cranes from New Princeton south to Burns Junction in the south and it will also provide FirstNet Band 14 service which I will talk about in a few slides further on in the presentation. This slide shows the existing coverage, everything in green is existing, everything that's not shaded currently has no coverage. The (INAUDIBLE) says the targeted service area is enclosed within this yellow box and then it will extend even further out. The red box indicates the search ring. We want to place a WTF centrally within the search ring to extend our coverage as best as possible within the targeted service area here in yellow. This slide shows the coverage in yellow and as I mentioned we will be enhancing the coverage by 90%. The coverage will increase from 9.8 square miles to approximately 92 square miles and it still does not cover everything that we want to cover here in the yellow box but as you can see this will provide a lot of service in the area. AT&T always strives to co-locate as best as possible on an existing tower or a building (if we have buildings that are tall enough) but as you know, this is in the middle of nowhere and there are no towers out there. AT&T did look at 4 other raw land sites that you see here (label alternative sites 1-4) they are also located within the targeted search range however these sites are also parcels owned by DSL and DSL was not interested in leasing a space at any of these locations. In addition, the topography would make it extremely difficult to build as these locations are more on a mountain top. Our proposed tower is located on a relatively flat parcel. These sites also do not have existing access off of Highway 78 and power is further south so to build on these 4 alternative sites it would cause a greater impact to the sage grouse habitat and it would be nearly impossible to build there. As Eric mentioned, this is within the low-density sage grouse habitat, our tower here is shown with the star and everything hatched is the low-density habitat area. This to the south is a prairie area for conservation. We determined through all the research that we put into this that our site will cause the most minimal disturbance and the least impactful, as the other 4 sites that we looked at. As I mentioned, the site is relatively flat. The lease area is approximately 1400' from Highway 78. There is existing access off of Highway 78 which will be improved and extended approximately 315' to the lease area. Power is to the south approximately 6 miles, which will be run overhead and then it will be extended about 1 mile to our lease area underground. DSL primarily owns the area within the low sage grouse area to the northeast and west. There is some BLM property and a few parcels that are privately owned but for the most part the parcels that are within the 10km radius that we had to look at for the ODFW mitigation plan is owned by DSL and, again, DSL pretty much dictated where they wanted us to put our

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tower. As I mentioned too, there's no access to these other sites that we looked at, the only access road is leading to our tower location.

This is a visual study of the existing conditions and the proposed conditions looking east. This is a map showing where that view was taken, our tower is located on the east side and this was taken in Harney County, to the west. The shows the view looking northeast and again you can see where this shot was taken from, it was taken right off the entrance where we will be accessing the site, this is the existing access road here that we will extend and improve. This shot is taken looking north and a little bit south on the Steens Highway. You can see them better probably in your packet than you can in my presentation but this is a visual study looking southwest, this is right off of the access road going north.

As I mentioned, this will also provide FirstNet Service and I'm not sure how much you are aware of FirstNet but it is a national nationwide mandate enacted by congress to provide a dedicated secure band for first responders. AT&T has been given the sole awarded contract to upgrade their existing facilities and install new facilities to provide this service for the FirstNet responders. AT&T towers meet all the (INAUDIBLE) requirements, they've enclosed all Federal, State and Local requirements, we operate within the FDC regulations and the radio emissions requirements and they're monitored frequently to make sure that the compliance is maintained throughout the gestation of the tower.

That is all that I have, thank you.

Kathy Clarich - Does anybody have any questions for Debbie?

Linda Simmons - This is Linda, I just have one comment. It would have been, I think, a nice thing to have had a letter from Harney County because this going benefit them greatly and also peaked the likes of BLM who have guard stations at Burns Junction. We don't need it but boy are they going to be happy about this. It would have nice to have maybe seen that.

Debbie Griffin - I did send agency letters out, I don't remember who it was in Harney County that it was sent to, I believe it was the Road Department, Eric, that you had me send a letter to and I did not receive any comments back from anybody from Harney County but I did send a letter out to them letting them know what we were building out here.

Linda Simmons - Well I just think that's great and it was nothing against, with everything that's going on I'm not surprised but they should be very happy about this.

Debbie Griffin - Yeah, it's going to provide coverage to both counties so that'll be a win for everybody.

Kathy Clarich - We had one of these before us before and they had to put things on the guyed wire to stop the birds from landing on them or whatever, are you having to do the same thing or has that all changed now?

Debbie Griffin - Yeah, we've been working very closely with ODFW and Mr. Evans and we have put together a mitigation plan and we are going to be proposing perch deterrents. So there

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will be on the top of the tower... actually let me go back to my presentation, I have a slide that I can show you, if you don't mind. This shows the perch deterrents that will be on top of the tower here, it's the pyramid. It's made of eel netting and it will prevent the birds, the raptors, from putting their nests up there and then we will also have, for the first 150', you can see here the measurement, we will also have a stealth net that will wrap around this tower and then on the horizontal cross members there will also be perch deterrents with some wires so that they cannot build, they can't perch there and they can't swoop down on the sage grouse and hunt them. Also, on the overhead power poles that will be extending north we are going to have perch deterrents on top of the poles with a bird perch wire system that will be on there. Like I said, we worked with ODFW and Nigel, he's actually the one that said to look in this direction to look into this direction for mitigation measures.

Kathy Clarich - Okay. Thank you. Anybody else have any questions for her? Is there anybody else that needs to tell us anything more about it before we go onto the opponent/proponent? Okay, I'm going to ask is there anybody that's in favor of this then? Is there anybody that's in opposition to this tower? Is there anybody from ODFW or anybody here that wants to comment? If not, then I will close the hearing. Eric, do you want to give us your summary?

No Proponent Testimony

No Opponent Testimony

Closed to Public Testimony

Eric Evans - I think this is pretty easy. She's right, she has worked really hard. I didn't get into the specifics of the OAR with you guys but you do remember that is was avoidance, minimization, then mitigation. So, you avoid the area (in these low density), you minimize any of your developments, you minimize the hazards to the sage grouse and then if you can't get all that done then you have to pay or you have to somehow mitigate somewhere else for the sage grouse habitat. That was part of her piece about avoiding this area, this is obviously the area that needs service and this is where it kind of has to be. The mitigation piece of it or minimization I guess would be adding some of these deterrents so they are minimizing the impact to sage grouse habitat. If you remember the stealth net is the same one that we did before. It is interesting, they don't seem and I don't remember (maybe Debbie can change my mind) it seems like on the guide wires the last time we did have something for birds flying past it, little metal whirly things.

Debbie Griffin - I was looking at the plan early today and that is proposed.

Eric Evans - Okay. I think that might be what you were getting at Kathy. And then just making sure that any of the predators for sage grouse aren't using that as a nest site. You do have, as part of the record, the mitigation plan. That's not the final plan, that's a draft, but there's been some minor tweaks, that's pretty close to what's happened as a part of the record. I think it's a no brainer, we need service down there. For me it's life and safety issues and it's a strong recommendation from me to approve this application and to thank them, they worked really hard on their mitigation plan.

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Linda Simmons - I don't know how many of you looked at the cost of some of that stuff but I mean it was in the hundreds of thousands of dollars as far as what would happen if you didn't do it. I thought it was a great application, it took me all afternoon to go through it.

Kathy Clarich - In addition to your proposed conditions of approval then, Eric, we need to add the form from the ODFW, is that right?

Eric Evans - That's my proposal, yes. If that's what you guys would like to do, yes.

Kathy Clarich - On the thing from ODOT, there is some work, evidently, to be done to widen the way into it, unless they've got that taken care of because we got the letter. So I'm assuming that's what the number one is, all required road access permits must be obtained?

Eric Evans - There is a little bit of access issues. Debbie do you have any more information about the access issues?

Debbie Griffin - We did talk, I'm sorry I don't remember the person that emailed me, but we do have to go through ODOT to get an access permit and to bring everything up to legal standings for the existing access road. We have all the paperwork and we've been looking through it and put a packet together to submit to them for that.

Eric Evans - That's probably another condition that we would add, that they obtain all the.... it's already on there.

Kathy Clarich - Number one say, 'all required road access permits must be obtained from ODOT'.

Eric Evans - I would also like to bring your guys attention to Adele Shaffeld, which is our building official, if you chose to she says in the chat, 'please refer them to the building department for permitting.' There is that you could put as a condition, they kind of have to do that anyway because it's the law but it's good to just mention to them that they'll have to get building permits.

Kathy Clarich - I'll just put that building permits must be obtained prior to construction.

John Faw - Doesn't that just come in on a truck when they set it there on a slab? They're not going to construct it on-site are you?

Debbie Griffin - I actually wanted to ask a question about this. Am I allowed to ask a question?

Ed Anthony - Yes.

Debbie Griffin - It's a prefabricated equipment shelter (I don't know if you've heard of the Oregon Gold Seal) it has the Oregon Seal on it. It's all been through the Oregon Building Codes permitting department, they've looked at it and they've approved it. So we take that and we build our concrete pad and we put the premanufactured walk-in cabinet and we bolt it on there and

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we're done. So, I don't know if we have to get a permit for that shelter, some jurisdictions require it and some don't.

Eric Evans - We'll make sure that we walk you through that process when the time comes. You'll have to get a zoning permit from my office anyways and whatever permits are required before we issue a zoning permit, we'll make sure that we talk you through that process as well.

Kathy Clarich - Okay, so I do not need to put anything on that then because you'll have already taken care of it?

Eric Evans - Yeah, that's fine.

Kathy Clarich - Okay then if it's not done then it's all your fault Eric. Okay, does anybody have anything else they want to ask?

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

Ed Anthony made a motion to approve a conditional use permit for an Unmanned Wireless Telecommunication Facility consisting of 449' guyed tower with anchor tenant's tower and Sage Grouse Rule Permit. John Faw seconded the motion which was unanimously approved by the Commissioners present.

NEW BUSINESS

Applicant: Jacob Tollman
18620 Dixie River Rd.
Caldwell, ID 83607

Owner of Record: Jacob Tollman

Conditional Use Permit for one Non-farm Dwelling. Planning Department File No. 2020-12-012.

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 Jacob Tollman. Planning Department File No. 2020-12-012.

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?

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- 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. John Faw - site visit.
 - b. Teresa Ballard - owns property in that neighborhood.
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 - Nonresource Dwelling in EFU, ERU or EFFU Zones; MCC 6-3A-3: Allowance of Certain; 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.

We will start with the staff report and Tatiana is going to do this one.

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

Tatiana Burgess - This is a conditional use permit application for one non-farm dwelling for Jacob Tollman, at 18620 Dixie River Road, Caldwell, Idaho 83607. The property is identified as Tax Lot 300 on Assessor's map 22S46E25, Malheur County Reference number 10960. The property is zoned C-A1 or exclusive farm use and it's currently sized at 31.24 acres. It is primarily surrounded by agricultural crop land and there is some dry ground in the area. It is going to be accessed via Highway 201 S through a shared ODOT approach. It has been confirmed that it's okay to be accessed by John Eden of ODOT and there is a letter attached. A DEQ sanitation system will be required prior to the construction. The parcel is currently within the Adrian Rural Fire Protection District, there is a letter attached regarding that as well. There is a total of 25.3 acres of water rights attached to this property through the Ridgeview Irrigation District. The property is primarily covered in class III soils and there is a small piece of the property of soils, class VI, which is also non-irrigated and that is the site of the proposed non-farm dwelling. The little bit of the history on the property, historically this property was sized at 10.5 acres and in May of 2020 it was consolidated with the adjoining tax lot to the west of it, which at the time was 20.74 acres. Upon that consolidation it resulted in the current parcel size of 31.24 acres. Right now, they are just proposing to build a non-farm dwelling on the dry part of property that hasn't been farmed and has no water right. That's all I have.

Kathy Clarich - So they added a dry property to the farm ground?

Tatiana Burgess - Correct. The area where the dry property is, that's just shy of 6 acres, it's just a little piece that has never been irrigated and it was just dry ground. They are proposing to actually increase a little bit of the irrigated land because they're going to add a portion onto the existing field. That was included in one of the maps that they submitted. They're going to add a segment that is approximately 400' x 50' and that's going to be at the end of one the fields so that way they are saying that they are going to increase the total area that is currently being farmed.

Kathy Clarich - Okay, thank you. Is Mr. Tollman here with us today? Would you like to tell us exactly what your plans are?

Applicant Testimony

Jacob Tollman - First of all, I'd like to thank you for your time and consideration in hearing my request this evening. Last year I purchased this 31 acre property. Like it was previously said, there's 24 (roughly) farmable acres with water rights. It's located in Adrian, Oregon. I farm the alfalfa to keep my own personal small herd of cattle. Currently, my mom and step-father are under a contract to purchase their home and feed lot in Ontario, Oregon. I plan to lease and run the feed lot, starting this summer, and run my cattle there. It is my desire to live in Adrian, Oregon on my property that I purchased. This would make the State of Oregon my home and place of employment. I have a small portion of dry land on the Adrian property that is not farmable and I would like to build a modest home to live in. It is my intention to live on the property full-time and farm the land. I really enjoy the area and would like to be a contributing member of the community and invest my money and resources in the State of Oregon. I respect

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the Malheur County's desire to protect the urban land. I've confirmed with the fire department, Sheriff's department, utilities and irrigation company and they have all agreed that a small home on the parcel would not adversely affect the neighboring community. I respectfully request your approval this evening and I stand by for any questions.

Kathy Clarich - Thank you. Does anybody have any questions for him?

John Faw - You're going to come in and use the existing driveway to the neighbor property that goes across your place?

Jacob Tollman - Yes, sir.

John Faw - And then you're going to extend it up the property line up to where you're going to put the house?

Jacob Tollman - Yes, sir. Right along the fence line, it will go straight to the house there on the dry land.

John Faw - As I recall, there's a pretty good elevation change, is there not, up to where your house site is?

Jacob Tollman - At the base of the hill, no. As you get farther into the dry land it kind of starts to go up but at the base of the hill it's pretty flat.

Kathy Clarich - Do you have a shared agreement on the road in, the first part of the road in that goes to the other house?

Tatiana Burgee - Kathy, if I may, that was actually outlined in the letter from John Eden of ODOT. He does specifically say that the existing driveway will not trigger a change of use and will not require any further action from ODOT. Per ODOT, that shared access point is okay.

Kathy Clarich - But didn't then he also put in the road in that it would (INAUDIBLE) the neighbor's property and that he needed to make an arrangement with them or something.

Jacob Tollman - The road that I'd be using, it goes directly through the middle of my property to their property so they have an easement through my property to get to their house on that road.

Kathy Clarich - That's what I was kind of wondering because the letter from ODOT sounded like they thought it was one the other people's property.

Jacob Tollman - Yes, ma'am. It runs directly through the middle of mine.

Tatiana Burgess - I think the letter from ODOT was worded that way because that house was there before so it was an access obtained for the house but it was running across Mr. Tollman's property although he didn't own it at time. That access was obtained for that house first so I guess that's where John Eden was coming from.

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Kathy Clarich - Because it says (INAUDIBLE) on that property for access easement across their property. Anybody else have any questions for him?

No Proponent Testimony

No Opponent Testimony

Closed to Public Testimony

Kathy Clarich - Tatiana, are you going to do the staff comments, if any?

Tatiana Burgess - I think it's a pretty straight forward application. Everything that was provided already, the application was very thorough and he obtained all the comments from all the agencies involved. There is nothing that is missing at this time. It would be our recommendation that we approve this application.

Kathy Clarich - This has already been taken off the tax roll as exclusive farm use?

Tatiana Burgess - No that hasn't been. That is a condition of approval. The permanent disqualification from the farm use will go into effect only when he pulls the permits for building so that will be the first condition of approval that would have to be verified and evidence provided that it has been completed, once he goes into the building phase. So as of now, there has been no changes to his taxes.

Kathy Clarich - Alright, so he's aware that he'll have back taxes to pay?

Tatiana Burgess - Correct, we've been communicating with the Assessor's office regarding that.

Kathy Clarich - Okay. What do you guys think?

John Faw - This isn't going to be close enough to the neighbor to have an impact, is it?

Tatiana Burgess - I don't believe so. I think on one of the maps it was indicated how far to the neighboring house it was. It's about 500' to the closest house.

John Faw - The only other concern I've got out there is well water. That country out there tends to be really short of ground water. I know there's some other places out there where they've had to plumb 2-3 wells together into a storage tank to get an adequate supply of water for domestic use. The neighbor parcel, I believe, they've got a storage tank cistern that they use so I'd hate to impact a well that's not very good with another is my only concern and for Jacob being able to get enough water there to supply a house.

Ed Anthony - My concern is if he takes somebody else's water away that they'll shut him off because the other well was established before his so that's a chance he's got to take.

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Kathy Clarich - It is on the one map, 500' from where his proposed house is to the other house.

Teresa Ballard - I know historically in that neighborhood, you're right John, water has been very hard to get and many people who have had long term homes have used cisterns. The other problem is that water that comes out of the ground is pretty poor, I can speak to that from experience. As far as the application goes, I think it's a really good one.

Kathy Clarich - I'll entertain a motion if someone wants to make one.

Ed Anthony made a motion to approve the staff report and findings of facts. Chad Gerulf 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. Chad Gerulf seconded the motion which was unanimously approved by the Commissioners present.

Old Business:

November 2020 Minutes:

Kathy Clarich - Are there any corrections or additions that need to be made to it?

Teresa Ballard - On the front page my name is spelled correctly but in the body of the minutes my name is incorrectly spelled and I wonder if that could just be corrected. The added an extra letter in there for me and I don't really need it. It's on page 22, particularly, it's in several places.

Kathy Clarich - Okay. Any other corrections?

Teresa Ballard - It's hard to know.

Ed Anthony made a motion to accept the November 2020 minutes with corrections. Linda Simmons seconded the motion which was unanimously approved by the Commissioners present.

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

Respectfully submitted, Kelsey Sullivan.

Minutes approved by:

Name: Kathy Clarich Date: 6-1-2021