

TO: Eric Evans, Malheur County Planning Director

FROM: Wyatt S. Baum, Baum Smith, LLC

SUBJECT: Planning Action Number 2020-10-011: Amend the Nyssa Urban Growth Area (UGA) and zone change from Nyssa UGA (N-R2/UGA-R) to Nyssa UGA (C-A1/UGA-C).

**I. General Information:**

SUBJECT PROPERTY (“subject property” or “Property”):  
**Rezone from NYSSA Residential/UGA to NYSSA Commercial/Exclusive Farm Use/UGA**

- 19S4732 TL 1000

APPLICANT: Anchorman Properties, LLC. Owners Marc and Tamara Bybee

DATE: November 17, 2020

CURRENT USE OF PROPERTY: Storage buildings and chemical tanks

**II. Summary and Background:**

*Proposal.* The Bybees currently operate their agricultural packing businesses on the surrounding lots zoned N-C and N-I. As part of those businesses, the Bybees employ up to 30 individuals, all residents of Nyssa and the surrounding area. It is the intent of the Bybees to extend their business operations into the surrounding land they own. The Bybee’s have begun that process to initiate a zone change on lots 2404 and 2500 in Map Number 19S47E32CB, and tax lots 2200 in Map Number 19S47E32CA, and 3500 – 4500 in Map Number 19S47E32CB. Tax Lot 1000 is subject to the Joint Management Agreement between the County and City and it is not being annexed into the City.

The Bybees would like to improve the structures currently existing on Tax Lot 1000. Tax Lot 1000 currently has two storage structures on it and multiple chemical storage tanks. The intent of the Bybees is to improve and rebuild the existing structures, which would allow for additional onion storage to assist in their various business operations.

*Use/Surrounding Uses.* The subject property (Tax lot 1000) currently has commercial structures on it. It has not previously been used for residential purposes and would likely not be a good fit for residential use based on that history.

The subject property is bordered on the east by light industrial property, neighborhood commercial property directly across Commercial Avenue, and the adjoining property to the west is used for crops and agricultural purposes.

*Analysis for Compliance with State and Local Regulations.*

The property will be rezoned from Nyssa Urban Growth Area Residential (N-R2/UGA) to Nyssa Urban Growth Area Commercial (C-A1/UGA).

In addition to the requirements under Oregon’s statewide goals and administrative rules, Malheur County and the City of Nyssa have criteria in their zoning ordinances that must be met for the proposal to be approved. County and City provisions are addressed in Section III. Because the plan amendment and zone change affect land within the County’s jurisdiction and the City of Nyssa, both the County and City governing bodies must approve the zone change and amendment to the UGA.

This request is being processed subject to the procedures for a quasi-judicial land use hearing contained in Chapter 11 of the Malheur County Code, and the Urban Growth Area Joint Management Agreement between the City of Nyssa and Malheur County.

**III. Applicable City and County Criteria and Standards:**

1. The applicable criteria can be found in **Nyssa Planning and Zoning Development Standards 9-4F: AMENDMENTS TO ZONING MAP OR CODE:**

- a. The Zoning Map amendment is in conformance with Statewide planning goals and guidelines.

**Proposed Finding: Statewide land use goals and implementing OARs applicable to this request are addressed in Section IV.**

- b. The Zoning map amendment is in conformity with the acknowledged Comprehensive Plan.

**Proposed Finding: The Malheur County Comprehensive Plan states, “The county will work with the cities of Ontario, Nyssa, and Vale in establishing and amending urban growth boundaries and joint management agreements.” Malheur County and the City of Nyssa have an ongoing relationship to jointly manage lands in the UGB, pursuant to the Nyssa Joint Management Plan. Both Malheur County and the City of Nyssa agree that the rezone will bring Tax Lot 1000 in to use that is consistent with the surrounding property.**

- c. The city council must find the proposal to be in the public interest with regard to community conditions; the proposal either responds to changes in the community, or it corrects a mistake or inconsistency in the subject plan or code;

**Proposed Finding: Both Malheur County and the City of Nyssa agree that**

**Tax lot 1000 is committed to a commercial or industrial use. The pre-existing use of the property is inconsistent with the current zoning in the UGB. Rezoning Tax Lot 1000 will align the property with its current use and the uses of the surrounding properties.**

- d. The amendment must conform to the transportation planning rule provisions under section [9-4F-5](#) of this article;

**Proposed Finding: N/A.**

2. The applicable criteria can be found in **Malheur County Code 6-10-7: COMPLIANCE WITH COMPREHENSIVE PLAN:**

In considering an amendment to the text or the zoning maps, the Planning Commission and County Court shall determine the following:

- A. That the proposed change is consistent with the Comprehensive Plan.

**Proposed Finding: The Malheur County Comprehensive Plan states, “The county will work with the cities of Ontario, Nyssa, and Vale in establishing and amending urban growth boundaries and joint management agreements.” Malheur County and the City of Nyssa have an ongoing relationship to jointly manage lands in the UGB, pursuant to the Nyssa Joint Management Plan. Both Malheur County and the City of Nyssa agree that the rezone will bring Tax Lot 1000 in to use that is consistent with the surrounding properties.**

- B. That the level of development in other locations has reached the point whereby additional land is needed for the proposed use(s), and that the area of the proposed change can best meet such needs.

**Proposed Finding: Tax Lot 1000 is part of the UGB. The reassignment of the zoning designation will allow the existing use to come into conformity with zone and allow the structures on Tax Lot 1000 to be rebuilt and improved to create additional onion storage to assist with the property owner’s various business operations.**

- C. That adequate rural services are available and will not be overburdened.

**Proposed Finding: Tax Lot 1000 will be used in for storage of agricultural material. Rural services will not be overburdened by the intended use of the property following the zone change. The lot will not be connecting to City services and will therefore not overturned the existing systems. The lot currently has the necessary services for the continued use.**

- D. That amendments to the text or zoning map which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the transportation system plan. This shall be accomplished by one of the following:
1. Limiting allowed land uses to be consistent with the planned function of the transportation facility;
  2. Amending the transportation system plan to ensure that existing, improved or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the transportation planning rule; or
  3. Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

A text or zoning map amendment significantly affects a transportation facility if it:

1. Changes the functional classification of an existing or planned transportation facility;
2. Changes standards implementing a functional classification system;
3. Allows types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility; or
4. Would reduce the level of service of the facility below the minimum acceptable level identified in the transportation system plan. (Ord. 125, 6-20-2000)

**Proposed Finding: This proposal will not impact transportation facilities.**

#### **IV. Applicable Statewide Planning Goals and Oregon Administrative Rules.**

A. Goal 1 – Citizen Involvement:

**Proposed Finding: This Goal is met through the required quasi-judicial process including public notice and public hearings. The process provides the opportunity for citizens to be involved by allowing them to comment and present testimony or evidence on the proposed amendment.**

B. Goal 2 – Land Use Planning:

**Proposed Finding: This property is already within the Nyssa UGB. The County and City of Nyssa have an agreement to handle development of the UGB and developed a land use planning process to address this goal.**

C. Goal 3 – Agricultural Lands:

**Proposed Finding: This property is within the Nyssa UGB is currently zoned residential and has storage sheds on it and has historically been used for commercial purposes. This Goal is not applicable.**

D. Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces:

**Proposed Finding: No identified natural resources have been identified on the subject property.**

E. Goal 6 – Air, Land and Water Quality:

**Proposed Finding: No negative impacts to air, land, water or other resources have been identified through this process.**

F. Goal 7 – Areas Subject to Natural Hazards:

**Proposed Finding: No known natural hazards have been identified on the Property.**

G. Goal 8 – Recreation:

**Proposed Finding: No current recreational lands or properties are being affected by this UGB zone change.**

H. Goal 9 – Economic Development.

**Proposed Finding: The Bybee’s initially attempted this zone change in 2019. As part of that process their focus was to increase their business to the benefit of the City and surrounding area. The Bybee’s have roughly 30 employees between Anchorman Properties, LLC and Fiesta Farms, LLC. 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. These are family wage jobs that would allow workers to move to Nyssa with their families.**

**As part of the development process, both Courtney Crowell, the Eastern Oregon Coordinator for Regional Solutions for the Office of the Governor submitted a letter in support of the proposed zone change as it would promote economic growth in the area. The letter is included with these findings. Greg Smith, Director of the Malheur County Development Corporation also submitted a letter in favor of the proposed zone change. Specifically noted in the letters is**

**support specifically for the industry being proposed by the Bybees, onion packing and shipping. The proposed development uses existing industries to capture the resources and local labor pool. The proposed use is located next to land currently owned and used by the Bybees for a similar purpose. Further, it is located of Commercial Avenue which supports local industry.**

**In 2018, the County and City of Nyssa held a joint public hearing to discuss among other things, the Treasure Valley Reload Center. Greg Winterowd, of Winterbrook Planning prepared findings for that hearing. The findings were adopted by the County and City. In those findings they review the 2014 Nyssa Economic Opportunities Analysis. The analysis acknowledges various changes since 2014, principally “[s]everal agricultural processing, warehouse and distribution firms have moved their operations to Idaho.”**

**Permitting the change would address the out-migration that has been occurring with processing and warehouse facilities moving to Idaho.**

**I. Goal 10 – Housing:**

**Proposed Finding: The City has recently converted UGB Commercial land to residential via the variance process to add to the inventory of residential lots for the City. The City currently provides for an inventory of housing and areas for residential development. As set out in the Urbanization goal, the City currently has significant amounts of land in the UGB set aside for residential growth. The proposed changes do not affect any existing housing in the City as the proposed development is of lots that do not have residential housing on them.**

**The City’s Plan reflects a slow in growth in residential areas in Nyssa with growth receding over the past ten years. According to the US Census Bureau<sup>a</sup> the population of Nyssa in 2018 was 3,175. The population in 2015 was 3,189, in 2010 it was 3,240. Though the change is not significant, it does show a downward trend alleviating some of the need of for residential housing. At the time the Comprehensive Plan was developed, the population of Nyssa was “expected to increase to 5,155 by the year 2000...” The plan was based on that number coming to fruition and the estimated additional 764 housing units needing to be made available. 20 years beyond this projected date, not only has the City not reached the population projection, but the population is also currently declining. The Plan the city implemented took into consideration this projected growth and provided for the potential growth with the existing zoning and UGB. Based on the above, the proposed zone change will have minimal, if any effect on access to housing by those in need. Further, the proposed zone change would allow for increased industry in the area which would draw individuals to the area and**

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<sup>a</sup> <https://data.census.gov/cedsci/table?q=Nyssa%20Oregon&tid=ACSDP5Y2018.DP05&hidePreview=false>

allow the city to expand into the UGB which currently has a surplus of residential land.

In reviewing the findings from Winterbrook Planning in 2018, the City and County adopted the following findings,

Nyssa has not grown 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 that may result from planned industrial and commercial employment.

Perhaps most useful in addressing the housing goal was Winterbrook Planning's findings "that there are at least 165 more buildable acres than needed to accommodate residential needs of the next 20 years." This determination was made in 2018. As is shown above, the population of Nyssa has decreased since 2018.

J. Goal 11 – Public Facilities and Services:

**Proposed Finding: The property in question already has the necessary utilities and infrastructure to it.**

K. Goal 12 – Transportation:

**Proposed Finding: The property in question is on Commercial Avenue and as such the necessary transportation infrastructure already exists to support the proposed change. Trucks already access the areas given the existing industries on the surrounding lots. Approval of the proposed change will not alter that and access to the parcels can be had from Commercial Avenue.**

L. Goal 13 – Energy:

**Proposed Finding: One of the state policies is to seek use and reuse of vacant land. Additional energy services are not expected with this zone change. Any development of the property will be done with an eye toward energy efficiency in its development.**

M. Goal 14 – Urbanization:

**Proposed Finding: The City has recently used the variance process to allow residential development on UGB Commercial property off Adrian Boulevard. The City has a robust UGB to allow for growth in all sectors. The land in question currently sits in an area of Nyssa that is surrounded on the south by land zoned NC (neighborhood commercial), and across Commercial Avenue land zoned NI (light industrial). To the West the land is zoned NC and to the East it is zoned N-R2 and N-R1. On the just outside city limits to the West the land is in the UGB but is currently being used for agricultural purposes.**

**The proposals further allow's the city to develop within existing urban areas before converting urbanizable land. It allows for maximum efficiency of land use within and on the fringe of the existing urban areas. The land is currently has storage sheds and some tanks on it and as the owners, the Bybee's have no plans to develop the land for residential purposes given its proximity to adjoining land owned by the Bybees and currently used as part of their agricultural businesses. This allows the compatible use of the land for agricultural purposes with the nearby agricultural activities. The Bybees also own land across the street on Commercial Avenue which currently has storage sheds on it which will be improved to further accommodate their business in the area. Developing the land as proposed will allow for a continued use that mirrors the existing use on three sides of the property.**

**V. DLCD 35 Day Notice**

Notice to Department of Land, Conservation and Development was submitted on January 5, 2021.

**VI. Property Owner Notice:**

Notice to all property owners within 100 feet from subject property was mailed on January 8, 2021.

**VII. Legal Notice**

Notice was published in the Ontario Argus Observer on January 8, 2021.

**VIII. Hearing Dates**

Joint Malheur County/City of Nyssa Planning Commissions: January 28, 2021  
Joint Malheur County Court/Nyssa City Council: February 9, 2021



**IX. Upon Recommendation from the Malheur County Planning Commission and the Nyssa Planning Commission to the Malheur County Court and Nyssa City Council:**

- a. Approve Malheur County Planning Action Number 2020-10-011 based on the findings, staff report and public testimony provided at the joint hearing in support of the application.
- b. Amend the Nyssa and County Zoning Maps rezoning the subject property from N-R2/UGA to N-C/UGA.
- c. Adopt Malheur County Ordinance No. 227 and City of Nyssa Ordinance No.TBD.

**X. SUGGESTED MOTIONS FOR APPROVAL/DENIAL**

- a. Approval needs two motions:
  - i. I move that the Malheur County Court Accept and Approve the Findings of Fact as set forth in County Planning Action 2020-10-011 based on the information, findings and conclusions set forth in the Staff Report.
  - ii. I 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.
- b. Denial:
  - i. I move that the request for a zone change from Nyssa N-R2/UGB to Nyssa C-A1/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 DENIED, based on the information, findings and conclusions set forth in the Staff Report.

**XI. EXHIBITS**

- 1. Application with attachments