

## Malheur County Planning Commission

The Malheur County Planning Commission Meeting was held remotely, via GoToMeeting, on May 27, 2021. Kathy Clarich called the meeting to order at 7:30 p.m.

### MALHEUR COUNTY COMMISSION MEMBERS PRESENT:

Kathy Clarich  
Ed Anthony  
Rob Kindschy  
Chad Gerulf  
Teresa Ballard  
Robert Quick

### PLANNING DEPARTMENT STAFF MEMBERS:

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

### NEW BUSINESS

Applicant: DARREN LEE  
515 Noble Rd  
Ontario, OR 97914

Owner of Record: Dallas Head  
5560 Hwy 201  
Ontario, OR 97914

***Application for a Conditional Use Approval for Aggregate mining in EFU zone and addition of mining site to Malheur County Inventory of significant Goal 5 resources.***

**Kathy Clarich:** Okay, so I'm gonna call the May 27th Planning and Zoning Committee Meeting to order, I think it's 7:30 P.M., and the first thing on our agenda is (new business), application for Daren Lee, and before we start, I have to read this into the minutes, so we will start with this. Now, is the time to hear the:

**"Request for a Conditional Use Permit for Aggregate Mining and Processing", in an exclusive farm use zone. Planning Department file 2021-03-010,**

When called to speak, please state your name, address and title if any for the record. There is a general time limit of testimony for five minutes. The applicant's initial presentation will be 20 minutes with a rebuttal of ten minutes. All testimony questions shall be directed to or through the chair, testimony questions should not be directed to staff or directly to witnesses.

Malheur County Planning Commission  
May 27, 2021

Do any members of the County Planning Commission need to abstain, disclose conflicts, disclose biases or disclose any ex-parte communications or site visits. If so, state the reason I have visited the site.

**Chad Gerulf:** Kathy, this is Chad and I need to recuse myself from this one, because I'm going to be opposing it.

**Kathy Clarich:** Okay. Thank you, Chad. Anybody else?

**Teresa Ballard:** Uh, Kathy. This is Teresa Ballard. I did go out and visit the site but I spoke with no-one.

**Kathy Clarich:** Okay, anybody else go and visit the site? Okay, does anyone object to any members of the Malheur County Planning Commission hearing this application? Now, remember, if you're muted, you have to hit \*6 to unmute.

Okay. Does anyone challenge the County Planning Commission's jurisdiction to hear these matters? .....None?

Land use statement for the record: Oregon Land use Law requires several items to be read into the record at the beginning of this hearing. I will now read those 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 6-3A-3(E) and 6-6-8-4, OAR 660, Division 23. Testimony, arguments and evidence presented must be directed toward the approval criteria, or other criteria, and 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 lose protection of an 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 or evidence sufficient to afford the decision makers and the parties an adequate opportunity to respond to each issue. The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the decision makers to respond to the issue precludes an appeal or an action for damages to Circuit Court.

Order of Proceeding: the applicant will be allocated up to 20 minutes for initial application presentation. The applicant may also present up to 10 minutes for final rebuttal. All others, wishing to testify will be given five minutes each. We'll start with the staff report, and then the applicant, and when you're called on, or when you want to speak, please state your name and your address, for the record. Okay, Eric, are you going to give the staff report?

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

**Eric Evans:** Yep, I am going to do that tonight, can you hear me alright?

Malheur County Planning Commission  
May 27, 2021

**Kathy Clarich:** Yeah, I can.

**Eric Evans:** Excellent. So, before us right now we have an application for conditional use approval for aggregate mining in an EFU Zone and a recommendation, you guys would also vote on a recommendation to approve this to the county court for our Goal 5 Inventory. This is, applicant is DARREN LEE, the owner of record on this property is Dallas Head. It's on Tax Lot 3200 Map 16S47E, County Reference No. 15139. It's zoned Exclusive Farm use and the parcel size is 308.42 acres. The application is actually only for 54 of those acres. It is currently used as farm and with a residence on it as well - one residence I believe. In the surrounding area of it as well, it does have a little bit of existing aggregate mining to the west and some farm residential uses to the South, East and North. It is being accessed via the existing road - Mesquite Road and then on to Jasmine Road. There's no restrooms, nothing, no sanitation involved. It is within the Annex Rural Fire District, and it is not within the special flood hazard area. And it's historically been in residential agricultural use. So, tonight we have similar to what we've always done, is the OAR 660 Division 23-0180 is where the criteria for the Goal 5 Inventory aggregate mining and the Goal 5 Inventory. I do want to note that we did get late today, and I believe you guys should have gotten it in your email. I am not sure if you guys had to check with your email that we have a letter from Dave Tiffany, commenting we're going to call this Exhibit 8, so it's an additional exhibit from what you guys have, and whenever you want Kathy, I can read that into the record or if it's appropriate for you guys just to attach it as kind of a part or as an exhibit to the staff report I can read it now.

**Kathy Clarich:** Why don't you go ahead and read it now? Because not everybody may have seen it.

**Eric Evans:** Okay, let me do one other thing, too. Just anybody that has a screen, I'll go ahead and pop it on your screen for you as well, can some people see that? Okay, so it says:

“Dear Eric and Commissioners,

The property accesses Jasmine Road. Jasmine Road is a paved County road that is maintained by the Ontario Rural Road District. The applicant DARREN LEE is applying for a conditional use permit for the purpose of a gravel pit operation to be accessed from Jasmine Road. Jasmine Road is not a high-traffic road, however, is very steep at 11½ % grade of incline. The extra truck traffic on Jasmine Road will cause Ontario Rural Road District some added work. There are school children that have to walk down the hill to catch the school bus, because there are times that the bus will not go up the hill. Therefore, I am going, I guess kind of request to limit the hours of trucks will be allowed to access the pit. There would be no truck traffic between 7:00 A.M. to 8:00 A.M and 3:30 P.M. to 4:30 P.M. as per the Annex School bus schedule. I will also ask that DARREN LEE be responsible for any damage to the road that is caused by the extra truck traffic and, for example, potholes and rutting etc. I will also recommend that Mr. Lee be responsible for any extra signage that is needed for advanced warning. Mr. Lee will need to install culverts into the approach of the gravel pit so that water can continue moving down the hill in the ditch and not on the road. If these conditions are met, the Malheur County Road Department, has no objections to this request.”

I'll also add that additionally, we did receive an email from Karl Shroom with Rural Road District No. 3 and he more or less is just saying that him and Dave actually met out there and he

Malheur County Planning Commission  
May 27, 2021

agrees with what Dave is saying in his letter. So, just for the end of this, you know, I think that if I would've got this earlier, I would have proposed additional recommended conditions of approval, so at some point in time, it would be my recommendation to add those conditions, if you guys were wanting to. And if you wanted to approve this application.

**Kathy Clarich:** Eric,

**Eric Evans:** Yeah

**Kathy Clarich:** That one from Karl though, there's more, a little bit more to it at least that's what I'm reading. It said there wouldn't really be much of any concern if it wasn't on that hill. He said, Peterson and Jasmine hill are the two worst scenarios in the District. So, I'm just letting you know, to maybe give a good look at that hill. It's based on the lower corner, that's pretty aggressive and at the bottom of the 11.5 % grade.

**Eric Evans:** Yeah, sorry, I may have done a poor job of paraphrasing that, but I put that up there too as well, I believe you guys received that in the email also.

**Kathy Clarich:** Yeah.

**Eric Evans:** And I did receive a couple of letters of opposition. Those people are online so I would assume that maybe they would be testifying to those letters. If not, we'll get it on the record however it needs to be okay.

**Kathy Clarich:** Okay.

**Kathy Clarich:** All right, so let's see.

**Eric Evans:** Can I add one more thing, I'm sorry. There was, I knew there was another thought that I needed to add. So, when I put the staff report together, I kind of missed the whole part of the application with the aggregate mining, or with the asphalt plant or the portable asphalt plant and portable concrete plant. You know, that's kind of different criteria that we have under our Code. And you know, I don't know that the applicant has met the criteria when it comes to those two processes.

**Kathy Clarich:** Okay. Okay, so are you done then?

**Eric Evans:** Yes, sorry, thank you.

**Kathy Clarich:** That's okay. I just wanted to make sure.

**APPLICANT TESTIMONY:**

**Kathy Clarich:** So then let's ask the applicant Darren Lee, if he would like to explain what you have in mind, and we'll go from there.

Malheur County Planning Commission  
May 27, 2021

**Darren Lee:** Okay, can you hear me?

**Kathy Clarich:** Yes. Please state your name and your address, please.

**Darren Lee:** My name is Darren Lee, I live at 941 Peak Road Weiser, Idaho. So, part of the reason for this application was traditionally on that property, probably for the last seventy years, there has been aggregate taken off it. Due to recent changes in policy with the mining industry is that they're becoming very much sticklers about people taking gravel, even off of their own property. Now the Heads haven't had a pit up there, like I said, for about the last 70 years and I don't know what it was like 70 years ago, but I would estimate, there's probably 100,000-200,000 tons have already been removed off the property. That entrance that I was talking about, or the entrance of the Quarry used to be a State pit. It was deeded to the pit, or deeded to the State decades ago under the condition that should they cease to use it for a certain amount of time, that it would revert back to the pit, which it did. So traditionally mining has gone on up there before any other houses were ever up there, and so what I'm trying to do is make sure that I follow the law and that I get this permitted properly, so that I can remove aggregate products from it. I currently operate a pit about a half a mile from the current property, and several of the neighbors, didn't even know that I had operated a quarry there. And I haul probably 10,000-15,000 tons a year out of there. So, my footprint is fairly small for a big operation. So, like I said, several people were surprised that I'd even operated a pit and I've been running that pit for more than a decade. So, there is a terrible need for gravel products in our area, if you try to get gravel now, Payette's difficult to get gravel, and I'm sure the Planning and Zoning Commission knows the challenges that Clear Water deals with. So, we've kind of put ourselves in a pickle for not have a decent gravel source, especially for the Weiser area they've been getting creamed on gravel. As an example, I charge about \$60 for the gravel products and about \$90.00 to do it for this year-round. If you get that from Ontario, you're looking at close to \$300. So, it's rather unfair, I think for people in our community. I think that this site again, traditionally has been used quarry and there is aggregate resources on it, kind of sporadic, in different spots and that's why I wanted to permit as much of it as possible so that I don't put myself in a pickle. Like, I have in the current pit I'm in, I have too much overburden to address now, so it's not cost effective. I think it's strategically placed for Weiser, as well as upper country, Payette and Ontario. It is kind of right in the middle of all. The nice thing is it uses Hwy 201, instead of Hwy 95 which we all know is a very dangerous road and Hwy 201 is typically 55 mph with every day I deal with basically the onion trucks and hay haulers. So that's the typical truck traffic and a lot of course farm equipment's moving on road. As far as the concrete or an asphalt plant, I think that I put in my request, that should the need arise. We have a small community, we don't really use... we have, I think there was three asphalt projects last year. Typically, what industry standard or best practices now is to operate out of somebody's pit. Almost all asphalt concrete plans, that I know of are portable: they come in, they set up, they use my aggregate product, they haul up to their site, and their project, and then they break down and they go home. These plants are expensive there a million plus for each one. I'm not interested in asphalt, I'm not interested in concrete. I'm interested in producing gravel products for a local area. So, I mean, we're probably a week away from having Hwy 201 chip-sealed again as it is. Right now, there's a project going on in Weiser on 9<sup>th</sup> Street, hauling all their aggregate products all the way from Ontario and Fruitland. So, if they were using my pit, they would probably have about 500 miles less a day of truck traffic on

Malheur County Planning Commission  
May 27, 2021

the roads. So, if I was a Planning and Zoning Commissioner, I'd have a quarry about every 20 miles because it just makes sense. In this case then the truck traffic is a lot more, a lot less because you don't have to deal with either Ontario or Fruitland or all of that extra time that's in between as well as having to pass it on to the consumer. Trucks are very expensive to operate, you can't get away from it. The Government's kind of got their hand in it pretty deep on road tax and getting it licensed and insured, so there's just no way to get away from that expense. So, the only thing I can do is hopefully offer a reasonable product at a good price locally and mitigate as much of the truckings, as I possibly can. The gravel up there is fantastic it meets all of the specs for the state which is a big deal. I have a small quarry over here on the Idaho side. The gravel has, what's called volcanic tuff in it, which means that it has stuff that's not hard enough and when you try to use it on the road, it will start to break down and pothole and popsicle. So, it's important that we of course, make good products, or when we do do our roads that we get what we pay for, as a tax payer. As far as talking about the road up to that area, if a school bus can't make it up to that road, and I'm pretty sure that my gravel trucks won't make it up that road, if the weather is inclement. So, I have no issue with that. I think that normally though, like I said, that road is steep as it goes past that other turn up there, didn't plan on using it, was just going to go right through where the traditional County did or the State had its access permit for. Like I said there was a lot of concern about asphalt and concrete ran up there. I'm a little guy. I don't have a lot of money. I'm not interested in that, but I am interested in doing best practices and part of best practices, is to allow a company to come in, who has bid a project and won a project to provide them with the gravel products and then they can make their materials. Less road traffic, less fuss, less muss, not hauling all the way from Caldwell/Nampa like what we're doing right now. It's basically insanity. We have good gravel around here. I think that this is a perfect site for it. Obviously, it's a perfect site: it's been used for seventy years when the State housed it. So that's all I have.

**Kathy Clarich:** Okay, does anybody have any questions for Mr. Lee, from the Commissioners? Remember \*6 if you're muted.

**Ed Anthony:** Did he say he was going to use that road or a different road. I didn't quite catch all that.

**Darren Lee:** There is no other road. That piece of property is very steep on two sides there, and it goes down to the canal. It's you know, quite a drop-off. So, there's a reason that all of you guys use that road that live on that, is because that's really about the only way that you're going to get up to that property. That's a very robust climb up there. So, I'm quite surprised actually that's 11.5% because I think, I know in Idaho it's 10% that they usually kind of mandate before they will allow people to build on a lot of stuff.

**Teresa Ballard:** This is Teresa Ballard. I wondered: do you have an estimate of how many loads of gravel you would haul daily on an average?

**Darren Lee:** Well, I actually have two seasons. I usually have a spring season and I have a fall season. People typically don't buy gravel in the summer, they forget that the roads and our yards suck in the summer. I do a lot of mostly local stuff. So, but typically I'm between 10,000-15,000

Malheur County Planning Commission  
May 27, 2021

tons, which is about 500 truckloads a year depending on, you know, the configuration of the truck. But I only have two trucks. So, I mean, a long hard day for us is eight loads a day.

**Teresa Ballard:** Thank you.

**Darren Lee:** You bet.

**Kathy Clarich:** I went up and viewed the site and I have some reservations about the steepness when you have a loaded truck coming down and the narrowness of that road.

**Theresa Ballard:** Yes, yes.

**Darren Lee:** Okay. I mean I've hauled off of there before. Dallas probably hauled 50 loads out of there last year, and that's like I said, there's been a 100,000-200,000 tons pulled off of there in the last 50-60 years. So, apparently it must be okay.

**Kathy Clarich:** So how have you been hauling out of there, if you're just now applying for the conditional use permit?

**Darren Lee:** No, the landowner, Dallas Head, has been hauling out of there for his own personal use.

**Kathy Clarich:** And it was all going down Jasmine Road?

**Darren Lee:** Yes. I actually went up too, because there's a really, it's hard ground. So, I had to take one of my big excavators up to break the material up for him so he can haul it out. And I mean it must have been an okay road because like I said, the State used it for probably more than a decade, they were okay with the State doing it in the same manner.

**Mike Lord:** caller 2 has a question.

**Kathy Clarich:** Okay. Wait a minute. You're not one of the commissioners, so I have to wait and open that in a minute for you. So, save your questions for a minute if you would.

**Mike Lord:** I'm sorry, I didn't realize we were still in the Commission's. Thank you.

**Kathy Clarich:** Yeah, we're just asking questions just yet. So, any other Commissioners have any question for Mr. Lee at this time? Okay, if not, I'm going to ask for anybody who is in favor of this action to state your name and your address and then we'll hear from you. Remember \*6, if you're in favor of.

**No Proponent Testimony.**

**Opponent Testimony:**

**Kathy Clarich:** Okay, so now I'm going to ask for anybody who's against this action, an opponent of it. It's \*6 to unmute yourself and ask your question and you have to ask it as of us.

**Eric Evans:** and don't forget we need first name, last, name, address?

**Mike Lord:** You want us to go in order?

**Eric Evans:** Just your order is going to be different than ours. Nobody has the same order so. Everybody kind of speak up and we'll kind of figure out who goes first.

**Kathy Clarich:** Okay, I got Mike Lord here, who wants to speak.

**Mike Lord: 458 Jasmine Road, Ontario OR 97914**

**Mike Lord:** OK so this is not my 5 minutes this is just asking a question, correct, of Mr. Lee?

**Kathy Clarich:** This is your 5 minutes. This is asking questions of me and then I can ask him.

**Mike Lord:** Okay, this is my five minutes. Okay. It seems to me, it's pretty obvious, that any homeowner and I want to say there's a roughly eight along the Jasmine corridor that's been used primarily for residential that, I can't imagine any homeowner would be in favor of it, unless they were, you know, to profit from it or something, but... I am a truck driver by living and living in the country also, I realize that there's some huge issues that are pretty obvious. One, is safety of the homeowners coming and going, checking their mail, that pets and children walking close to and on Jasmine. Our property values are definitely going to be affected by bringing in industrial traffic into a residential area and our quality of life, noise, dust, airborne pathogens, you name it. I can't imagine any homeowner would be for it and it doesn't sound like they are. Number two, seems like there's three people that are probably for this at least a minimum of three, and that would be Mr. Lee, Mr. Head, and a County representative. And obviously, if none of the homes were out there, let's imagine it's all just a bare land, it makes sense. I mean, because we're a growing area, growing State, growing Community. But because of the homes that are on that road and because the area that he's wanting to bring industrial traffic into it, to me, it makes absolutely no sense to do something like this except for people that are going to profit from it or save money, you know, obviously Government entities. I do have a question that if it doesn't get approved, what's the next option? What gravel pits are next to look at other than this one that's right in the middle of a residential community. Also, want to go on the record to say that Mr. Lee went and solicited each home owner himself, prior to this meeting and pretty confident, based on what my wife Dinah Lord had said, I was not there, but she spoke to him that he misled everyone to believe that they were not going to use Jasmine Road as the haul road. So, I'll leave that up to further discussion. I'm sorry it's Mike Lord, I'm at 458 Jasmine Road. Mr. Lee also mentioned that he didn't know, he mentioned that, the homeowners didn't know, he's been out there working for the last seven years and hauling off aggregate, but I would challenge him that maybe we didn't pay attention to it because he wasn't using Jasmine Road for the last seven years, he was



Malheur County Planning Commission  
May 27, 2021

using Mesquite. Portable set-up: if you happen to bring an asphalt plant or a concrete plant and it's portable, I work in the road construction business, I move asphalt plants and concrete plants for a living. And you're talking about bringing some huge pieces of equipment on flatbed trailers in and out. And that in my opinion, even makes it more dangerous where it's not permanent. I'm not advocating that it should be permanent, but you may not be disclosing the dangers of bringing all that equipment in and out, in and out, year in year out. I would also like to say, what is the truck traffic right now per day? How many semis use that road per day? I would venture to say it's less than 10, maybe less than 5, and what would be the future daily truck traffic in the future? 20 trucks a day, 30 trucks a day, 50 trucks a day? If you walk up that grade from the mailboxes, which are about halfway up, it is almost physically challenging to walk up it and I would challenge it steeper than 11%. The switchbacks on that road are also very, very tight, very, very narrow. I drive an 18-wheeler for a living I would not want to run up that road personally, myself. I think it's very, very unsafe, even on dry roads. It would be one lane in, one lane out. What happens if you meet someone coming up? What happens if you meet somebody coming down? I'm opposed to it. I think it's pretty obvious why? And I'm actually pretty shocked that the County would even consider putting in a gravel pit in a residential community, such as the Jasmine Road homeowners. I'm pretty upset, I'm trying to stay calm, state the facts. But I would think that there's other options available. This isn't the only gravel pit within a 10 or 20-mile radius and I think you can pick one that's not in the middle of eight homeowners' livelihood, and eight homeowners' quality of life.

**Kathy Clarich:** Times up, Mike.

**Mike Lord:** I just finished, thank you. I was trying to talk fast.

**Kathy Clarich:** All right, thank you very much.

**Mike Lord:** Thank you.

**Michael and Mandi Hastings:** 464 Jasmine Rd & 470 Jasmine Rd, Ontario OR 97914

**Kathy Clarich:** Let me, let me see, who else might be on here. Michael and Mandi Hastings. Are you on to speak on this?

**Michael Hastings:** Yes, we are. Can you hear us?

**Kathy Clarich:** Yes, I can hear you.

**Michael Hastings:** You can hear me? Okay. Yes. Okay. I'll start.

**Kathy Clarich:** First and last name and your address.

**Michael Hastings:** Okay. Okay, this is Michael and Mandi Hastings. We live at 464 Jasmine Rd and 470 Jasmine Rd. Can everybody hear me, alright?

**Kathy Clarich:** Yes.

**Michael Hastings:** Okay. I too, I want to mirror Mike's opinions. We are adamantly opposed to this idea. We think it is 100% completely out of line with the quality of life that the whole environment, I mean it is a basically a residential and agricultural/homestead/wildlife sanctuary, quite frankly. We have also submitted a lengthy and detailed letter detailing maybe in more detail that I can produce in five minutes, the reasons why. I guess I'll just highlight some of the, some of the main things, they kind of mirror, what we just heard, the other caller, say. The surrounding properties, one of the most difficult things is that Mr. Lee has tried to paint a picture of this area, that is absolutely not what it is. He's painted a picture that the surrounding area is just bare and agricultural dry land and is not that, it is very much a residential family homestead type environment. And in fact, he, in his phases that he references is there, they're directly in our backyard, directly along our property borders. He indicates that there is a, that the traffic and roads and the things that have been established and have been, he tries to make the picture that this aggregate mine has been in operation for now he's saying 70 years and that's absolutely not the case. From what we can tell, you know, there was, there is, and was an aggregate pit here that was used to build the original Owyhee Canal Corridor, but it absolutely has not been in production. In addition, to that, the roads that are here, are roads that are here for light residential use and the reason that they are for light residential use is because of the topography. As was mentioned, the grade, I measured even today, there is a 300 ft. incline from Mesquite Rd up to the top of Jasmine Rd and he is proposing that, trucks enter off of Jasmine Rd and because of the steepness, there are two switchbacks and blind corners, there are blind intersections, mailboxes, driveways. There is a variety of problems in and of itself just with what he said in that situation. When he says that he's looking for, he says that it's the perfect site and that he's the little guy and he's not interested in big operations, but yet in his application... again, I will, I will actually support what Mike said when he came to us door-to-door and indicated that he, over and over, that he's a one-man operation: he has a backhoe and a truck and he just wants some aggregate but then and that you won't even know we're there. Basically, is what he said to us, and then, when we look at the application, it's not that. It's bringing in concrete plants, it's bringing in asphalt plants and so I feel like the in on itself on the grand scale, the application for this idea has been deceitful and misleading in a variety of ways. Also, a very concerning point to us is the water situation. He indicates that, there is no water on the property or being used in the operations, which is completely false. There actually is a water directly on the property because we live here, and we know how the watershed works. We have identified and know with certainty that there is a spring and a seat that originates on the Phase 2 area of his proposal and that water seeps through the ground, and across the property and into a ravine where it becomes noticeable on the surface of the land and it also helps to rehydrate and reconstitute the residential drinking wells of at least five to six residences. I mean, this is, this is groundwater directly where he wants to dig, and it makes sense because that is where the water comes in that is where the aggregate is deposited. So, you know, I guess if nothing else in addition to the written correspondence that we've laid, it just is a bad idea there is nothing about it that benefits the landowners, the property owners or anybody in this region, it doesn't benefit anyone. In addition, to wildlife, and I will add this, this is a beautiful area. Okay, we are on the slope.  
Is it over?

**Kathy Clarich:** Yeah, Your times up, yes

Malheur County Planning Commission  
May 27, 2021

**Michael Hastings:** I apologize. I'm done.

**Kathy Clarich:** Okay. Was Mandi going to say anything or is?

**Michael Hastings:** Let me ask her. Are you good with that? Mandi feels good with that. And we feel that with the written correspondence and the verbal, we're fine.

**Kathy Clarich:** Okay, thank you. So, let's see who else I might have on here?

**Chad Gerulf: 451 Jasmine Road, Ontario OR 97914**

**Eric Evans:** Hey Kathy, we also have Chad here that wants to speak as well, Chad Gerulf.

**Kathy Clarich:** Okay, does he want to go ahead and speak now then?

**Chad Gerulf:** Sure

**Kathy Clarich:** Okay. Chad, state, your name

**Eric Evans:** And Kathy just, just so you know, can you see my screen and timer?

**Kathy Clarich:** Yeah, and I kind of looked off and then didn't catch it when it went down to 0. So, I'll try to be a little closer.

**Eric Evans:** I'll speak up as well, but I don't know if you heard me say time or not. So...

**Kathy Clarich:** No, I didn't hear you say it... so...

**Eric Evans:** I'm going to mute some people here. Actually, I'm going to mute everyone and you might have to unmute yourself here. All right, we're ready to go.

**Chad Gerulf:** Okay. Okay, this is Chad Gerulf. I live at 451 Jasmine Road with my wife and my two young kids. I'm opposed to this, you know, my main concern is my kids' safety. They, the school bus actually does not run up Jasmine Rd, they're picked up at the intersection of Mesquite and Jasmine. Every day they're dropped off there as well. The bus does not run up Jasmine Rd. So consequently, my kids walk up the shoulder of the road. It's Jasmine. I mean, it's a narrow, it's a very steep road and it's just not a road that can support high production gravel pit. I mean, that's just the fact of the matter. At the proposed point that the pit would enter and exit Jasmine, the grade of that road is... it's 11.5%, and to put that in perspective, that's, that's twice the steepness of Cabbage Hill that drops down into Pendleton. So, you're talking about the trucks, go up the hill empty and they're coming down loaded. So, I mean that's just an extremely steep grade. It's narrow. There're corners on there that I just, you can't pass a belly dump. Two vehicles is... it's tight. I mean it just doesn't work, it's just not safe, it's not safe enough to risk it. The road is not in good condition. Anytime we get a rain, it's steep enough that the water eats the shoulders off the

Malheur County Planning Commission  
May 27, 2021

road and, and the asphalt cracks off the shoulders like three feet in. It's just going to destroy it, I mean, there's just no question in my mind. The safety of that road is a big concern to me. I understand that the gravel up there is good, but man, does that road? It's, somebody will get hurt on that. I mean, the corner that's down, the lowest corner that hits my pasture, you just can't make that corner with trucks, I mean, it just doesn't work. Where the, where the shoulder of the road is, the shoulder actually fluffs off onto my gated pipe in my pasture already, with just the residential traffic. So, I mean just as these heavy trucks are just going to destroy the road. That's just that's all there is to it. The road typically sees fair amount of traffic in the fall, in hunting season, around pheasant season there's a major uptick in the traffic there and that's going to be concerning as well. But I mean, bottom line, my kids, my pets. I just don't like the idea of big heavy trucks rolling off that hill. So, I don't like the idea of Jake brakes and if he happens to miss a gear or has brake trouble, you're going off of an 11% grade into a blind sharp corner. So, but it's just, it's just a rough road. I mean, that's all I'm saying. That's why I'm opposed to it, and, and I guess that's it for me. So, thanks for your time.

**Kathy Clarich:** All right. Thanks, Chad. Who else do we have on the list? Is Patty Dickinson here on this particular item.

**Don and Patty Dickinson: 5120 Power Road, Ontario OR 97914**

**Don & Patty Dickenson:** Yes, can you hear me?

**Kathy Clarich:** Yes, I can. Your name and your address, please.

**Don & Patty Dickenson:** My name is, our name is Don and Patty Dickinson and we reside at 5120 Power Road and I have personally been on this hill for over 25 years and my parents bought this property in 1975, 46 years ago. So, I am definitely a resident, I have seen a lot here that's happened. Nothing like what's going to happen, which scares me. I live at the top of the hill and I have to come down two blind corners and a very steep switchback, and even in the winter, it's going very slow or you just slide? And that's all there is to it. You just slide your, you cannot control it. So, to me children, new children on the block below the mailboxes, is a concern. We are, we know they're there, we know their pets are there, so it's just slow and go. This scares me about all this, this traffic with the trucks. Meeting the UPS truck sometimes on the blind corner below Chad's shop is amazingly scary, because he's hugging the corner and I try to stay on my side but you know, our eyes just pop open because, there we are, looking at each other. So, it is a problem. The roads are very narrow. I would like to say, thank you for the gentlemen that are my neighbors that I have, not personally met, but you guys are just super great. You have very, very testimonial input into this, it is amazing what you guys are saying. It's all true, it's exactly what I was going to say. The speed, the speed of these trucks is what's going to scare me. I watch this white truck, go down Mesquite Rd. I see at a high pace. I do not see the driving skills changing any. If he gets on this hill, that's what scares me. It's just amazing that, that is the big thing that I oppose. Also, has anybody gone and done any kind of an impact study on the gravel area that he has operating over on the DeHaven's property? Does anybody know what's going on over there? Is it going to be repeated here? If he's, it worries me, that not enough has been done to see if this operation is safe. He gets a hold up here, we're going to see a cement, we're going to see asphalt

Malheur County Planning Commission  
May 27, 2021

and it won't stop and we will lose everything that we have tried to have up here. It's peaceful, it's pristine. I have raised my children up here, I'm growing old up here and I love the view, and I do not... phase 3 is going to be in my backyard and I am not looking forward to that, because that is my view to the valley and I do not want to lose that. So, I'm going to go and thank you for your time and I hope more people are thinking, like I am, thank you.

**Kathy Clarich:** Alright, thank you very much Patty. I have a Riley Downing.

**Riley Downing:** 5151 Power Rd, Ontario OR 97914

**Riley Downing:** That's me. Hi, Kathy.

**Kathy Clarich:** Are you, are you here in opposition? Okay,

**Riley Downing:** So, is the timer ready? Is it going to start over?

**Kathy Clarich:** It should start over here in a minute, just go ahead and state your name.

**Riley Downing:** Okay, I'm Riley Downing, I'm at 5151 Power Road. I'm a neighbor with Patty and Don. So, I'm just going to read you what I prepared and then I have a couple other things that I'd like to add. In our wildest dreams did we ever imagined that we would live where we do: wide open spaces, quiet, tranquil country settings with very little traffic, usually just the residents that live up here. Beautiful views of all the mountain, ranges and abundant wildlife. We now find ourselves fighting the right to maintain this way of life that this land has afforded us. Gravel quarries are not pretty. I look out my window right now. I can see the old pit, that Mr. Lee was talking about. The operations are not quiet, I hear him when he's over there with his track-hoe, I hear him when he's hauling out of the pit, because he has to go up a very steep hill, we hear him, our dogs hear him, my father lives beyond me, he can hear him. The gravel removal process leaves ugly scars on the land. (Riley's Phone Rings) Hold on just a second. Wouldn't you just know incoming call, sorry about that. The gravel removal process leaves ugly scars on the land, I can see them. Regardless of how much reclamation, which you stated would be done, it's still going to look like a gravel pit. We, as neighbors and stewards of this land, have huge concerns with this gravel extraction process: possible concrete and asphalt operations taking up residence in our front yards and our backyards. It's just not acceptable, it's actually unthinkable. Trucks up and down the road, water trucks, other miscellaneous asphalt, and moving trucks, potential customers looking at product, they'll all be driving up this narrow, curvy road with blind corners. I won't go into my opinion of those corners. All of us up here have had experiences of meeting cars in those tight corners. A car alone is bad enough: we squeal, we just shutter because you can only get over so far to the outside before you slide off into Chad's pasture. The person on the inside can only get over so far before they are rubbing the side of the hill, which is very steep. I've seen Mr. Lee's trucks hauling gravel up and down from here and I prayed I would never meet him in a corner. I didn't, I hope none of the other neighbors ever had, but I thought to myself when that was happening, what would I do if I met one of those trucks in this corner? So, we are always slowing down, cautiously taking that bottom curve and watching for any type of other vehicle coming up. We've already talked about the deterioration of the heavy vehicles on

Malheur County Planning Commission  
May 27, 2021

the road, it's a huge concern. There're issues with that section of the road anyway, it's bad in the winter, it's bad in the spring when it rains, it's just... it's bad. A lot of sand is left on there, it gets very slick sometimes in the spring, just from the sand and I have to drive all the way to the top of it, as Patty was speaking of. And it can be just as slick in the spring going down, because that sand, and actually, just puts you out of control if you aren't in control, as you are going down the hill. Right now, kids and pets play in this area: they ride their bikes, they want to take care of their livestock, which is across the road. They're just doing all the things that kids love to do with so many opportunities being out in the country. I have grandkids up here that do the same thing. They do this without worry right now, but all of that would change as this would become a very unsafe place for kids, pets, animals, and adults. Land values would more than likely go down. Research is historically showed that values decrease in some areas with gravel quarries, as much as 25% to 30%. None of us bought up here thinking that someday that would happen. There will be no employment impact either... Two to three additional jobs, that would be created. Mr. Lee stated in his application that he was actually closing the DeHaven quarry. So, it seems to me, like, those two or three jobs would just move over to a different location, not actually creating new jobs. Which brings up the question Patty had: you know, why are you closing the DeHaven quarry? The economic impact that this quarry has on us in no way balances the scale of damage that would be done. It would do an irreparable damage to the quality of life for all of us. That's why I'm asking this commission to not approve this application. Please, allow us to enjoy all the amenities that naturally belong to this amazing place. Thank you.

**Kathy Clarich:** Thank you, Riley. How about Dinah Lord?

**Dinah Lord: 458 Jasmine Rd, Ontario OR 97914**

**Dinah Lord:** Thank you very much Kathy. I'll start my timer just in case I can't see the one that you have going, Dinah Lord. I live at 458 Jasmine Road. I'd like to begin with my husband and I purchased this property almost 11 years ago. We never thought that we would be able to live in such a beautiful area with the wildlife and such great neighbors and not have to deal with all the problems that exist in town. There are many times during the year when due to the angle of the sun that you cannot see any traffic coming, when you are heading west on Mesquite Rd and turning South on Jasmine to go to our residence. You cannot see oncoming traffic. If anyone of these residents were to drive through this intersection at these particular times of day and they hit an 18-wheeler or a dump truck, they would be killed. How much is our safety worth in this area? Jasmine Rd will not support a production gravel pit. The road barely supports the residential traffic. The only cattle mentioned in Mr. Lee's application for conditional use permit, were those on the DeHaven ranch located in Mores Creek Hollow. There are cattle located in the pasture at the intersection of Mesquite and Jasmine Rd. This pasture runs from this intersection south up to the blind corner. Should heavy vehicle traffic fail to negotiate this blind corner, this traffic would drop into the pasture, thereby being a potential loss of livestock and the monetary production said cattle offer to the owner. The Annex School District does not access Jasmine Rd to pick up or drop off children. So, that argument is not valid. Jasmine Rd is a light residential road. You don't put truck route through a light residential road, that rarely even sees a tractor, let alone never seeing agricultural transportation vehicles. It is not viable to mix residential with industrial

Malheur County Planning Commission  
May 27, 2021

traffic. The applicant Darren Lee visited this homeowner, myself, at our residence to ascertain as to whether we had received the notice of the hearing.

*Unknown Noise Disruption.*

**Kathy Clarich:** What's going on?

**Riley Downing:** I don't know.

**Kathy Clarich:** Okay, go ahead.

**Dinah Lord:** The applicant asked if we had any concerns. I asked the applicant specifically how this quarry was to be accessed. Mr. Lee stated that it would be accessed via Mesquite Rd. Homeowner again asked the applicant if the proposed quarry would be accessed via Jasmine Rd. I was told again that it would be accessed via Mesquite Rd. At no time was I told by the applicant that he would potentially be asking for a temporary concrete and asphalt plant. How do the home owners benefit from this quarry? We do not. We don't even get to keep the status quo with this proposed gravel pit, concrete plant, asphalt plant. The homeowners along Jasmine Rd give up our safety and our quality of life. And due to a recent Albion quarry report, we would experience because a lot of us live within less than a quarter of a mile of this proposed, quarry, would suffer a 32% drop in our property values, just so the applicant and the landowner can make money. The odor and the heavy commercial traffic are major concerns to asphalt and concrete producers. What types of enclosures will be in place that are temporary for this facility? Are there going to be enclosures around the drive systems, exhaust fans, burner assemblies, air compressors, dust blowers, air cylinders, vibrators? No matter whether the asphalt system has a drive system, composed of a drum, drag or pug mill components, there will still be noise. This does not even address the concrete plant, which has its own types of systems. I question what are the weight limits on Jasmine Rd? Jasmine Rd will not tolerate heavy commercial, industrial traffic. I can hear 18-wheelers and dump trucks traveling on from the DeHaven Ranch on Mesquite Rd with my windows closed. I would like my full letter that I sent by email to the Planning and Zoning Commission to be admitted into the record and I am vehemently opposed to this conditional use permit. Thank you for your time.

**Kathy Clarich:** Thank you, Dinah. Is there a Jennifer? Is she back on?

**Jennifer Gerulf:** 451 Jasmine Rd, Ontario OR 97914

**Eric Evans:** She's kind of been going... Oh, she might have come back just now.

**Kathy Clarich:** Are you there? Jennifer?

**Jennifer Gerulf:** Are you there? Sorry.

**Kathy Clarich:** Yeah, go ahead.

Malheur County Planning Commission  
May 27, 2021

**Jennifer Gerulf:** First off, we recently moved up here, within the last year, to put our kids off. Oh, sorry, my name is Jennifer Gerulf. I am at 451 and 450 Jasmine Rd and we just are concerned. We just recently moved up in this area for some peace and quiet and to get our kids off of Highway 201 and into the Annex School District. And part of the nerves of where we lived before was getting our kids on and off of the bus, because of trucks and traffic and worrying somebody was going to be turning and somebody, a semi coming down the road and getting our kids when they were standing there, waiting for the bus. And I suddenly have this concern again. Because it is such a steep terrifying road to drive on. Now, when I meet a nice neighbor up here, we all come up to this blind corner and we all creep around the corner. So, when we meet other, our eyes are wide open and waving because it's like, oh Jeez, like here we are again on this little tight corner. So, it's very dangerous just to drive a car, let alone to think that my child could be walking on this road when a car is coming and a truck is coming, and they're heading to water the cows, or walk their dog, or something that they're allowed to do now, which would suddenly put a halt to my kids' lifestyle. Second off, there are other gravel pits around this area. There is one right on Hyline, for sale right now, I believe owned by Tim McBride that is for sale. So, this is not the only rock pit that is in this area. My other concern is the dust and noise as of all the rest of the neighbors and there is no water there saying and so how is the dust going to be controlled if you have no water and that kind of stuff like blowing down on us all the time. My other concern is, if this is permitted somehow, like what about weekends, when my kids are outside 24/7? Like, and are roaming, the hills and crossing the road and heading down to the cows, or, something like that. Like what about, what about on the weekends? Like, are we not allowed to enjoy our weekend's? Let alone worry about them between the school bus hour time. Like it's just very nerve racking. The roads are already horrible in the winter. During the winter, the County they do get up here right away, but it is so narrow already that by the time they plowed the snow, it's basically a one-lane road during the winter. So, Mr. Lee had mentioned that during the winter is when he's hauling gravel and there is not room for two people in a car, let alone a truck and a car on that road. When you are sliding around the corner, when the road is icy, like it was this year. There were a couple times even creeping down the road, I thought I was going to end up in our own pasture creeping down the road. So, to me, the truck, is just terrifying to think of that during the winter time. And definitely do not want the smoke of an asphalt plant. I was exposed to that in my younger years and I know that sticky dirty mess, and the smoke, and the smell of that. And none of us on this hill, want that. Anyways, I hope everybody considers this. And if they do decide to pit this, or to permit this pit, that we put some serious stipulation and listen to the property owners around here when we are putting those stipulations in, thanks for your time.

**Kathy Clarich:** Thank you Jennifer, do we have a Bob & Tina Cassity?

**Bob & Tina Cassity:** 478 Jasmine Rd, Ontario OR 97914

**Eric Evans:** And so, with them I actually added their names on the phone so just if I could remind them \*6 will unmute them.

**Kathy Clarich:** Bob and Tina \*6 will unmute you.



Malheur County Planning Commission  
May 27, 2021

**Bob & Tina Cassity:** Yes. So, we are Bob & Tina Cassity and we live at 478 Jasmine Rd. We live with our daughter, Brooke, and we are in opposition of this conditional use application. The proposed gravel pit in Phase 1 would be directly across from our house on the West Side. Phase 2 would be approximately a 100 ft from our front door to the field. We will essentially be surrounded by all of this operation. We have actually lived here for over 28 years and like the other neighbors have voiced, we, we just love this country lifestyle. It is quiet, it's peaceful, it's a dead-end road, it's a wonderful neighborhood, which is surrounded by farmlands. There are nine homes and families that would be affected by this operation, not five houses, as Mr. Lee has stated on his application. The impact of this new quarry / gravel pit and the future concrete, asphalt plants, will greatly change all of this, and our neighborhood, and the quality of life that we are used to. The proposed access road to this new operation, which is Jasmine, which we all live on, is directly below our home and it is a sloped windy road that, like everyone has voiced, it is scary, and it has a tight little curve at the bottom with blind spots. And there are children and pets that play in this area, and it is also the road that all 9 residencies in the community get to their homes. I might also add I know someone touched on this, but halfway up the access road, Jasmine, we have a community mailbox stand and this is where all the residents stop, they check and drop off their mail. The mail ladies, a newspaper delivery, we all use this road to access that and so there is extra traffic there. We're pulling in, we're pulling out onto Jasmine. So you can imagine having dump trucks going up and down constantly on this road is very dangerous and very concerning and I will also add that I have seen and met Mr. Lee in his loaded dump truck on his current route on many occasions and I have voiced many times to my daughter riding with me: I'm very concerned. He flies around the corner and exceeds the speed limit, it's very reckless and dangerous how he drives with a full load. So why would that change once he is on our road. The berm that were noted to reduce the noise, our community is on a hillside and you can't tell me an operation like this with crushing of rock with the noted hardpan, excavating, transporting up and down with the constant flow of big trucks, shifting gears, breaking on Jasmine hill will not be a nuisance in creating lots of noise, it will destroy our peaceful way of life. I would also note as Riley stated, that there will be extra added flow of traffic from customers, looking at the rock that they're buying and therefore, therefore will also increase the noise factor and traffic as well. I think some of the other neighbors mentioned the negative impact that this quarry will have on our property values. This really concerns us. From my research, historically, when a quarry comes into an area, the reduction in value properties are significant, as high as 35% or more, and you can imagine based on where they're going to be located by our property... Who is, who would want to buy our house with that going on? So, you know we've worked really hard on our home over the 28 years that we've lived here and as well as our neighbors have and to see the depreciation because of this operation would be devastating. You know and as far as the dust his application states, that there would be water trucks to keep the dust down, but there is not a water source in these new proposal locations. So, I would ask where is this water coming from, we only have ditch water and that is for farmers, who have the rights to it and if his plan is to drill a well then that would affect our water table, in which case that would have devastating effects on our property as well for all of us who are dependent on wells for our water.

**Eric Evans:** Hey Kathy that's time.

**Tina Cassity:** We already struggle with the low water table.

**Kathy Clarich:** Tina, time.

**Tina Cassity:** Okay, so finally, I would just ask the Planning Commission to ask yourselves: would you want this kind of operation next to your home and in your neighborhood with the increase of noise, the increase in traffic with the added dangers, increase in death, and the depreciation of your home value?

**Kathy Clarich:** Thank you

**Tina Cassity:** Thank you so much for your time.

**Kathy Clarich:** Do we have another caller on here, that hasn't had a chance to speak? \*6, if you're muted.

**Eric Evans:** Okay, it actually looks like both callers are unmuted so they should be able to unmute their phones.

**Kathy Clarich:** Okay. Well, I think one of them is Jennifer and I don't know who the other one is. That's why I was like... Okay, is there a is there another caller who would like to speak in opposition to this action? If so your \*6 to unmute your phone. Okay, hearing none other people on the line. Unless I've missed somebody... Darren you get a chance to answer and rebuttal to the questions that these people have stated.

#### **APPLICANT REBUTTAL:**

**Darren Lee:** Thank you for all your input, everybody. I am trying to be a good neighbor. I was born and raised here. I've lived here for 55 years. That area that is up there, that is Dallas Head's, I rode on that as a kid when there were no houses up there, I rode motorcycles and I shot guns and so I know what you're talking about. But Mr. Head also has the right to enjoy the value of his property. Everybody talks about the wide-open spaces out there, but not all of that is yours. There's over 300 acres of it, that's Mr. Head's, that he pays taxes on, and that he has the right to you know, do what is traditionally done there. Like I said, they hauled gravel off of that for over 70 years. People here, people are talking about how the quarry is going to devalue your property. There's been quarries there forever. There was a State pit right behind the house, right there at Tina Cassity's. That was the State pit and they hauled off of that road for a long time. I understand their issue with the road and I am in agreement with you on that, that there does need to be something done there. The nice thing is that there's gravel right there, very close. If you need to widen that road or work with County Commissioners on making that a safer road, and I'm all for it, because I don't, I don't need to have any accidents. I haven't had any accidents in 15 years, since I've had a CDL and I don't plan on that. With the kids on the road, I get it. That's part of living in the country. Sometimes you gotta walk to the bus stop and I think that we can mitigate that with some timing issues, I don't have a problem with that. The other thing is that people are going off like all of a sudden, this is going to be like Knife River or something like that. This is a small community and I, there's only so much business that I have and like I said, maybe 10,000-15,000 tons a year, it's not a huge amount in the big scheme of things for a quarry.

Malheur County Planning Commission  
May 27, 2021

The reason that I had put in the application possible concrete or asphalt plant was, in the past, I've been asked by contractors if they can come set up a plant for a project and then pull out. That's it. I don't want to get into the asphalt business. I don't want to get into the concrete business. Period. That was the only reason. Those are best practices that we use right now. You talk about wanting to keep truck traffic down yet, you don't want a quarry that mitigates that by having it right there in your, in our neighborhood so that we can use it and not have to haul from Nampa, Meridian, Cambridge and all that. So, let me see, talking about the kids, walking up the road again. Like I said there's ways to mitigate that. I think that we can come up with a solution on the road. I did not mean to mislead the Lords when we talked about coming up the road. What I meant was that we weren't coming up towards your house, we would go right into that old pit, that was the State pit. That seemed to work appropriately for the State forever. So, I figured that that was the best solution because the other is not a good road and quite frankly probably should not have been allowing any building permits up there with a road that doesn't meet Code. That's something that probably should have been addressed a long time ago. So, that's not really on me but it is something that you know we're, we've all inherited and we need to address. As far as an impact study, you ask about that, I have disturbed over 12 years 13 acres on the DeHavens' property. It's very expensive when you open up property with the mining industry in Oregon. It's \$1,000.00 cash bond for every acre you open up. I'm not going to go up there and open up 300 acres on Dallas Head's. I wanted to permit as much of that as possible, so that gives me options to be able to make good choices. There's 300 acres up there, there is no way that we're going to mine off 300 acres in the next 30 years with what we have going on. If that happens, then we are no longer living in LCDC in Oregon or anything else. We're now Boise. It's just not going to happen. So, the reason that I did that was because on the last quarry I got myself into a pickle. You asked about what I'm doing there in the quarry is that the overburden is so deep now that it doesn't, it's not productive for me. If I would have done an 80-acre permit, which I should have done, I would have been able to get over in an area where there was better gravel. But you don't know until you do. That's just the way it is. You talked about the open spaces, again a lot of those open spaces belong to Dallas Head, and, just like you, he should have every right to enjoy his property and I don't think that it's, it's really fair for everybody else to say, hey you know, you can, you can just not do anything with your property but we can do whatever we want with ours and like I said... Sorry? Like I said before, you know that, that road was acceptable for the State to use as a pit up there. And I get it, now there's more people on there and I think that's a fair, fair concern by everybody, including, myself. And I do think that we can come up with a reasonable solution on that. I mean I do have excavation equipment and like I said, I know that bank is steep, but I don't know what the easement is there, as to how I would be able to correct that road. As far as during the winter, if you're not getting a truck up or down, or a car up and down that road in the winter, I'm not coming anywhere close to it. I don't haul in the winter, unless, it's like it was this last winter, I hauled some in January because the weather was like it was like was April... So, I don't really consider that as a concern because I don't need my trucks off in a ditch and they're going to be off in the ditch a lot sooner than your car would be on that road if it was those type of road conditions. So, like I said, I think Mr. Head has every right to enjoy the value of his property, just like you have the right to enjoy the value of your property. That land up there has been mined for, like I said, when I talked to Dallas, that's where the name (INAUDIBLE) the numbers came from as far back since the 50's because that has been a pit up there and it's been used as a pit. So, if you're concerned about your property values, I don't think that they should change because it's been a pit in that area and there's a lot of ground out there. I

Malheur County Planning Commission  
May 27, 2021

had to put these proposals together to satisfy Planning and Zoning and if we need to adjust by and put it somewhere else where I can still mine gravel appropriately and get along with my neighbors, then I'm all for it. But, like I said, I was born and raised there and I live right around the corner, we have a 160-acre farm there. I like it just the way it is too, but again, everybody should have the right to enjoy the value of their property and without disenfranchising their neighbors. But also, without disenfranchising Mr. Head and myself. That's all I have. Thank you.

**Kathy Clarich:** Okay, thank you!

**Unknown person speaking:** *unknown*

**Eric Evans:** I got it, we're good. I muted them.

**Kathy Clarich:** Oh, okay. I was like, I don't know who's talking. Let's see, where we at now? Yeah, we're at staff comments. If any?

**Eric Evans:** So, I don't really have any recommendations at least in regards to the conditional use permit for aggregate mining. I would say that, you know, I don't... I think that there would be more work that needs to be done to application in order to meet the criteria for the asphalt or concrete plant at that property, including things to address, you know, vibration, smell and possibly some dust issues as well. And I would also recommend as I stated earlier that if you guys, if we did approve, the conditional use permit for mining of aggregate on that property, we include conditions such as: *"Truck traffic is excluded from accessing Jasmine Rd from 7:00-8:00 A.M. and again from 3:30-4:30 P.M."* That's the first one. The second one, something along the lines of *"Applicant will be responsible for any damage to the road that is caused by the extra traffic this includes, but is not limited to: potholes, running etc."*. And the third one that I would recommend adding to the ones that are already on the staff report are *"Applicant is responsible for the signage necessary for the increased traffic this includes, but not limited to: two-Slow Children signs, two-Trucks Entering Road signs, and right and left arrows, depending on which way you are going around that steep corner, and lastly some kind of warning regarding culverts as stated in the letter from the Roadmaster."*

**Kathy Clarich:** Okay. Does any of the Commission have any more questions for Mr. Lee?

**Ed Anthony:** Yeah, I do.

**Darren Lee:** Ok, let me possibly un-complicate this thing here. If it's such an issue where the neighbors are particular about the asphalt and concrete plant, it was only just as a possibility, I can withdraw that part.

**Kathy Clarich:** Okay, thank you! Was there somebody that had a...

**Ed Anthony:** Mr. Lee, people are worried about the dust. Is there any way that you can put a dust embankment thing in there to keep the dust down, so there's not so much dust from the gravel.

Malheur County Planning Commission  
May 27, 2021

**Darren Lee:** Sorry, traditionally in the bottom of a quarry, it's gravel, it's not dirt. The only time I encounter any dirt is when I remove over-dirt, which is usually in the spring. And that goes into the, usually, my berm to save for reclamation. It goes off to the side, as a... what you call it... as a noise and visual barrier.

**Kathy Clarich:** How about a crusher, but doesn't that make dust?

**Darren Lee:** Say again?

**Kathy Clarich:** The crusher, are you not going to have any? Are you not going to crush any of the gravel?

**Darren Lee:** No, I have a crusher. A crusher traditionally doesn't make dust. If anything, that makes dust it's usually a screen plant, which is screening in the summertime, which I don't do, because it vibrates the rock. But that gravel up there is incredibly sieved 6/100s of 1% is what the materials testing came back as, so, very-very little, if no dirt in the gravel box.

**Kathy Clarich:** I have a question for you. So, you said like widening the road or something like that. And how would you go about doing that without passing the cost on to all the people that are up there.

**Darren Lee:** Well, I mean if the, I know that that's a very steep bank there. It would require, all it's required is a lot of fill, compacted fill on there to bring that up, but I don't know whether it would end up in encroaching on the neighbor's property by the gravel sloughing off, where you actually intended to widen it. I don't know what the easement is on that property or on that road.

**Kathy Clarich:** Okay.

**Darren Lee:** That's not for me (INAUDIBLE) to widen that road.

**Kathy Clarich:** Okay. Does anybody else have any more questions for Mr. Lee?

**Ed Anthony:** I do. Is there any other way that you cannot use Jasmine Rd? Is there another way to make a road to go into Mesquite?

**Darren Lee:** No, because that hill, it's super steep and it has the irrigation canal goes all the way around the back side of it and I mean, that's one of the reasons that it, kind of, has such a nice view up on the tip top of it, because it is so steep. But that's why everybody uses that road: is the only other road that I know that is anywhere close to there is actually the canal ditch bank road, which of course is, as you know, the Owyhee Irrigation District's which it's not mine or anybody else's.

**Kathy Clarich:** Any other questions?

**Darren Lee:** I actually, I want to backtrack on there a little bit. Where you see those three buildings, those farm buildings down there by that house, by that 3200 block, that used to be an

Malheur County Planning Commission  
May 27, 2021

old access road to the top of the quarry. There might be a possibility that we could piece together... it's fairly steep. But it's not out of the question for me to maybe do something there.

**Ed Anthony:** I think if we could do something there, that would solve 90% of your problems.

**Darren Lee:** I agree, I just never really looked there, because it's been an abandoned little draw, but, and it is fairly steep. But, that may be a solution to everybody's concerns.

**Ed Anthony:** I know people are mad, cause you're putting a gravel pit in. But I agree with you that you have a right to put a gravel pit in on your property.

**Darren Lee:** And I do want to be a good neighbor to everybody and that is really why I went and I talked to everybody. I wasn't trying to deceive anybody. I lived there and I want people to be a happy neighbor when they see me drive on their block.

**Ed Anthony:** I just want safety. My main concern is safety for the people that live on that road and for people that are visiting on that road, that's my biggest concern.

**Darren Lee:** And it is a concern of mine too. I don't need to get tangled up with anybody. We don't need any sad stories out of us.

**Ed Anthony:** Right! If that's something we could look at, maybe have you look at? I don't know what to say to put that on the....

**Eric Evans:** I mean we can either, continue this?

**Ed Anthony:** That's what I say we do: continue this, so we have time to look and see if we can put a road in there.

**Eric Evans:** Or we can look and see what the best way to do it is.

**Mike Hastings:** Hello, I'm curious if we can comment, can we comment?

**Eric Evans:** It's not open to public comment anymore. I do want to ask Kathy something real-quick, if I could?

**Kathy Clarich:** I didn't close it to public comment.

**Eric Evans:** Okay. I do have a question for you though, real-quick.

**Kathy Clarich:** Okay.

**Eric Evans:** Do you want to you just enter these written comments into the record? How do you want to handle that?

**Kathy Clarich:** Oh, how long?

Malheur County Planning Commission  
May 27, 2021

**Eric Evans:** Except maybe the one from the Lords, from Mike and Dinah, but it'll kind of be a moot point, if we continue this then you guys will receive it and can review it, as part of the record.

**Kathy Clarich:** Well, in my opinion right now, I think we need to continue it, to see if they can find a different access and then we can discuss it. But I guess everybody would have to be agreeable to that. If not, then we'll just go ahead and make a decision now, I guess.

**Eric Evans:** I also wanted to bring up one other thing regarding the road and the widening of that. So, you know that, that will be, kind of be hinted upon a little bit, but, he won't be able to do that without County permits. I mean, it's going to need engineering, it's going to need everything to bring that up to standard. And I'm pretty sure the Road District No. 3 and the Malheur County Road Department isn't paying to have that road be brought up to standard, it'll be...

**Kathy Clarich:** Usually, usually the residents on the road have to pay for it.

**Eric Evans:** Well, a lot of times when you have a proposed development, it is going to be the developer, that it'll be a condition on the developer and if he wants to develop the property, it'll be his, the applicant's responsibility.

**Kathy Clarich:** Yeah. Okay.

**Jennifer Gerulf:** Can we make public comment again?

**Kathy Clarich:** Who's calling?

**Jennifer Gerulf:** This is Jennifer Gerulf.

**Kathy Clarich:** How do you want me to handle that, Eric?

**Jennifer Gerulf:** I just have a quick statement on the widening of the road.

**Eric Evans:** I guess, I guess for me, it depends if you guys want to, it sounds like you're coming to a consensus to continue this and we'll have plenty of time to make public comments, once he's given an opportunity to address the access issue to passing Jasmine...

**Mike Hastings:** I too, would like to public comment, and literally like a 30 second comment.

**Kathy Clarich:** Well, just a second, so does the Board want to try for a continuance on this until the next meeting?

**Ed Anthony:** Oh, I'll make a motion to do that. I make a motion to continue this until...

**Eric Evans:** It's going to be June 24<sup>th</sup> at 7:30 P.M.

Malheur County Planning Commission  
May 27, 2021

**Ed Anthony:** June 24<sup>th</sup> at 7:30.

**Robert Quick:** I'm Robert Quick. I second that.

**Kathy Clarich:** Okay, we all have a motion and it's been seconded. All in favor: say "aye".

**Teresa Ballard:** aye.

**Kathy Clarich:** opposed?

**Eric Evans:** Can we have a roll call?

**Kathy Clarich:** Okay. Tatiana, can you take a roll call?

**Tatiana Burgess:** Yes, I can. Kathy Clarich? I'm sorry

**Kathy Clarich:** Aye.

**Tatiana Burgess:** Ed Anthony?

**Ed Anthony:** Aye.

**Tatiana Burgess:** Robert Quick?

**Robert Quick:** Aye.

**Tatiana Burgess:** Rob Kindschy?

**Rob Kindschy:** Aye.

**Tatiana Burgess:** Teresa Ballard?

**Teresa Ballard:** Aye.

**Tatiana Burgess:** Thank you.

**Eric Evans:** Okay. And we will, there will be opportunity for public comment at that next hearing. So again, that's date and time certain. So, it's June 24<sup>th</sup> at 7:30 p.m.

*Ed Anthony made a motion to continue the public hearing to date and time certain – June 24<sup>th</sup> at 07:30 pm. Robert Quick seconded the motion which was unanimously approved by the Commissioners present.*



Malheur County Planning Commission  
May 27, 2021

**Robert Quick:** Kathy, I have a question.

**Kathy Clarich:** Okay.

**Robert Quick:** In Mr. Lord's testimony he said that the, he mentioned that the County was pushing this, or something to those words. I would like to have some clarification as to why that was stated, is that true?

**Kathy Clarich:** I think he was just talking about the things that the County was trying to put in to make sure that it got approved as how I took it to mean, but is Mike still on?

**Tatiana Burgess:** Mike? He's not.

**Kathy Clarich:** Okay, he's not on, so...

**Mike Lord:** Yes, I am. I am, I am on.

**Kathy Clarich:** Oh! There he is. Can you answer Mr. Quick's question to you about the County and why you thought they were pushing it?

**Mike Lord:** So, has the road been staked for widening currently? We saw some people out there with some survey stakes.

**Kathy Clarich:** Oh, are you talking about the stakes that were put it to mark, where the entrance was to this pit off of Jasmine? I think we lost him... But that's something we can check into or have Eric check in to for us for our next meeting.

**Eric Evans:** Yeah. And so, that I don't think that there is any flagging we did have. I want to say yesterday, Dave Tiffany and Karl Schrum with the Rural Road District #3, went to go out there and take a look at it. And I'm not sure, I don't visit the site, but they may have flagged the site for you guys, so... And Bob, real-quick, I would just like to talk to you about. I'm not sure. I mean, I don't... This came in front of my desk and there's been... I'm a neutral party in this. So, I don't push it. I receive the application, I process it, I deem it complete and you know I will occasionally make a recommendation based on how I feel if they've met the criteria, but I try to stay as neutral as I can.

**Robert Quick:** Understood. Thank you that, that answered my question.

**Kathy Clarich:** Alright, so.

**Eric Evans:** Sorry my batteries went dead. I had to plug my phone or my computer in as I was talking.

**Kathy Clarich:** Okay, so ok. This one will be set aside then, continued until next month. It still will be open to public comment at that point in time. So, let's move on to our next item on our agenda.

Malheur County Planning Commission  
May 27, 2021

**Mike Lord:** Kathy, this is Mike Lord. Is it too late?

**Kathy Clarich:** Yeah. You can talk next month.

**Mike Lord:** Okay, thank you.

Applicant: Daniel & Hannah Bennett  
9075 10<sup>th</sup> Ave NW  
Wildrose, ND 58795

Owner: Daniel & Hannah Bennett  
9075 10<sup>th</sup> Ave NW  
Wildrose, ND 58795

***Conditional Use Permit for one Non-farm Dwelling. Planning Department File No. 2021-04-009.***

**Kathy Clarich:** Let's see. The next thing on our agenda is Hannah Bennett and I think she's on the line too, so... I have to read this into the minutes and then...

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 Hannah Bennett. Planning Department File No. 2021-04-009. When called to speak, please state your name, address and title for the record.

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? If so, state the reason.
  - a. None.
4. Do any members of the County Planning Commission have any conflicts to disclose?
  - a. None.
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 and Robert Quick - 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.

Malheur County Planning Commission  
May 27, 2021

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 Dwellings in EFU, ERU or EFFU Zones; 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.

Applicant will be allocated up to 20 minutes for initial presentation. The applicants may present also up to 10 minutes for final rebuttal. All those wishing to testify will be given 5 minutes each. So, we're gonna start with the staff report and Tatiana, are you doing this one?

**Tatiana Burgess:** Yes, I am. Can you hear me alright?

**Kathy Clarich:** Yes, I can.

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

**Tatiana Burgess:** Thank you. Okay, So, this application is for a conditional use permit for one non-farm dwelling, the applicants and owners of the records are Daniel and Hannah Bennett. Mailing address at 9075 10<sup>th</sup> Avenue NW in Wildrose, North Dakota 58795. The proposal is for Tax Lot 502 on Assessor's Map 18S44E20, Malheur County Reference Number 20275. The property is located West of Vale, accessed off of Bully Creek Road. The property is zoned exclusive farm use and it's 10.93 acres. It is currently a vacant lot, it is not irrigated, nor has it been irrigated. All the surrounding properties are employed currently in farm use and there is a couple of parcels directly South and North that are currently not being actively cultivated. A sanitization system will be required for a home and the property is currently located within Vale Rural Fire Protection District. There is a letter attached from the District regarding this application. Like I said, the property is not irrigated, therefore, it has no water rights. The

Malheur County Planning Commission  
May 27, 2021

majority of soils on the property are predominantly Class VIII, with a very insignificant amount of soils of class I, III & IV. However, the site of the proposed dwelling is non-irrigated and is completely covered in the soils of Class VIII. This property has been previously owned by Mr. Helm. And prior to 2007, there was... what you see on the screen Tax Lot 500, 501 and 502, previously, was a total of five different parcels. In 2007 there was a Conditional Use permit to where those parcels were consolidated and re-platted as you can clearly see them on the map with Tax Lot 500 being retained of the primary parent parcel and the farmland and tax lots 501 and 502 designated as non-farm partition with the potential of having non-farm dwelling on them. That permit number was Conditional Use permit 2007-07-002, the legal partition was recorded on Plot Number 07-23, Malheur County recorded Instrument Number 2007-8042, which is included in your packet as Exhibit #1. Part of the conditions of that previous Conditional Use Permit were that the farm statement had to be recorded in with the deed for the property and also evidence of permanent disqualification from farm use had to be provided. All of that has been done. So, this property, for this particular property, it has been disqualified from farm use special assessments for taxing purposes, as of 2008. So, as of right now, all of those conditions have been met that were proposed as part of that permit. However, the permit did expire in 2011, without the house ever being built on. So right now, the Bennett's are the new owners and they are proposing to have the ability to, essentially revisit the idea of permitting the non-farm dwelling for this parcel as it was intended, originally by Mr. Helm and that's all I have.

**Kathy Clarich:** All right. Thank you. Please state your name and your address and then tell us your plans. Oh, if you are muted hit \*6.

**Hannah Bennett:** Hi, can you hear me?

**Kathy Clarich:** Yes.

**Applicant Testimony:**

**Hannah Bennett:** My name is Hannah Bennett. My address is 9075 107<sup>th</sup> NW, Wildrose, North Dakota and our plan is, to we'd like to build a house on the property approximately 3-bedroom, 3-bath, 3,200 square foot home. We yeah, I guess. What else? What else do you need to know?

**Kathy Clarich:** Are you planning on, I noticed when I was out there that you had some flags out or there are some flags that run up the hill. Are you going up that steep part right there? Or, how do you plan to access, actually the lot after you get off Bully Creek Road?

**Hannah Bennett:** Well, there's a spot, we've been driving up, but it's not quite as steep where we put the flags. I think it's where the ditch rider used to come down, but I think they put a burn pit in there. So, we wanted to fill that, and yeah, make the driveway less steep and we're planning to put the house on top of the hill where I had put the flags.

**Kathy Clarich:** Okay, so then you are aware of what the fire department is asking for in roads, right?

**Hannah Bennett:** I didn't see the copy of the letter that the fire department submitted.

Malheur County Planning Commission  
May 27, 2021

**Kathy Clarich:** Okay. I can read you what it says on here, so that you're aware of it, I guess. Okay, it says, according to the International Fire Code, any access road must be an all-weather surface that has 20' unobstructed width and 13'6" unobstructed vertical clearance, any access road must include an improved turnaround on roads greater than 150' in length, and not exceed a grade of 10%. If the road is greater than 500' in length minimum access road width is 26'. Driveway must also be capable of supporting live loads of at least 75,000 pounds. Driveway angle of approach departure cannot be less than the design limitations of the fire department apparatus.

**Hannah Bennett:** Okay. Yes, I believe we can meet all of that with the driveway.

**Kathy Clarich:** Okay, I just wanted you to be aware of what they were asking for a driveway.

**Hannah Bennett:** Okay.

**Kathy Clarich:** That's a pretty steep hill there, so... Okay. Do anybody, any of the Commissioners have any question for Hannah? No questions for her at all? Okay? Then I will ask if there's anybody here that the in favor of this action? Anybody? So, is there anybody in opposition to this action? \*6, if you need to speak. If not...

**No Proponent Testimony.**

**No Opponent Testimony.**

**Closed to Public Testimony.**

**Kathy Clarich:** What? Eric, I thought you said something because I can't hear it.

**Eric Evans:** No, Sorry. We were trying to get it Hannah to mute herself, because she was making it hard to hear.

**Kathy Clarich:** Oh, okay. So, I guess at this point, in time, we close it to public hearing them, since there's no opponents or proponents for it. Any other staff comments?

**Tatiana Burgess:** Yes, I just wanted to mention Hannah has indicated in their application, that they are also bee keepers. And I wanted to point that out that they will be considerate of the surrounding farm use activity as they are themselves farmers. Just forgot to mention that point, I just wanted to bring it up.

**Kathy Clarich:** Yeah, and that statement's already in the deed about the farm use, right?

**Tatiana Burgess:** Yes, yes, it was.

**Kathy Clarich:** Okay. Okay, what do you guys think?

Malheur County Planning Commission  
May 27, 2021

**Ed Anthony:** I think we ought to give the permit back. We gave them one back in 2007 we might as well give it back to him.

**Chad Gerulf:** I agree.

**Kathy Clarich:** Yeah, I just think they need to make sure that they go by the Fire Code.

**Ed Anthony:** It says here in the road conditions review adequate fire breaks roads got to be met Fire Code and if they don't do it, then they won't get permit. It's already wrote in here, that's what they've got to do.

**Kathy Clarich:** Okay, yep. I just couldn't find it as fast as you could, too many papers.

**Ed Anthony:** It's already wrote in there.

**Kathy Clarich:** Okay, so I need a motion then.

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

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

**Kathy Clarich:** Motion carried. Hannah you're good to go.

**Hannah Bennett:** Thank you.

**Kathy Clarich:** Your welcome!

Applicant: Edward & Ruthie Lynde  
PO Box 243  
Jordan Valley, OR 97910

Owner: Edward & Ruthie Lynde  
PO Box 243  
Jordan Valley, OR 97910

**Conditional Use Permit for one Non-farm Dwelling. Planning Department File No. 2021-04-016.**

**Kathy Clarich:** Let's see what was next. Next on the agenda is Eddie Lynde.

Malheur County Planning Commission  
May 27, 2021

**Eric Evans:** And Eddie is going to be on the phone so you might want to remind them again to push \*6. Eddie if that is you as a caller if you hit \* and then number 6 on your phone.

**Kathy Clarich:** Okay, so I've got to read this into the minutes to start.

**Kathy Clarich:** Now is the time to hear the request for a conditional use permit for one non-farm dwelling in exclusive range use zone for applicant Edward Lynde. Planning Department File No. 2021-04-016. When called to speak, please state your name, title and address for the record.

1. 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, if so, state the reason?
  - a. None.
4. Do any members of the County Planning Commission have any conflicts to disclose, if so, state the conflict?
  - a. None.
5. Do any members of the County Planning Commission have any bias to disclose, if so, state the bias?
  - 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; 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.

Malheur County Planning Commission  
May 27, 2021

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.

Are you doing the staff report Tatiana?

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

**Tatiana Burgess:** Yes, yes, I am.

**Kathy Clarich:** Okay, staff report please.

**Tatiana Burgess:** Okay, so this is another Conditional Use Permit for a non-farm dwelling for the applicant and owner of the record Edward and Ruthie Lynde, mailing address PO Box 243 in Jordan Valley, Oregon 97910. This proposal is for tax lot 1701 on Assessor's map# 29S46E, Malheur County Reference#11272. This property is accessed via the private drive - Lynde Drive off of the Ion Highway, just North of the Jordan Valley. The property is zoned exclusive range use and it's sized at 1.99 acres. It is currently vacant and it's not irrigated. It is surrounded by rangeland and there is a... Eddy's current property, is a, he also owns a property directly South which is on your map as tax lot 201 and his home is directly South of the proposed development location. There will be a DEQ approved sanitation system required and the proposal is within the Jordan Valley Rural Fire Protection District. There is a letter attached from them. There is no water rights for this property. The property is covered in soils that have not been surveyed by the Natural Resources Conservation Service. The proposed home is situated on soils that are incompatible with farm use as outlined and OAR 660-033-0130(4)(c)(B). Upon doing research for this property it has been concluded that prior to 1993, there was a manufacturer home on this property with a septic system. There was no sufficient evidence that could be produced to demonstrate that the permit was legal at the time. So therefore, we were not able to conclude legal replacement dwelling approval. Per Assessor's office records, that manufacture home has been removed in 2003. So right now, the only alternative to allow any form of dwellings to be placed on this property would be through the proposed conditional use permit. And there is no other known zoning history. Thank you.

**Kathy Clarich:** Okay, thank you. Okay, and Mr. Lynde, are you on the line now? \*6, if you're been muted. Okay, and tell us what you're what you wanted to do.

**Eddie Lynde:** I'm sorry, I couldn't hear you very well.



**Kathy Clarich:** So, do you want to tell us what your plans are for this lot?

**Applicant Testimony:**

**Eddie Lynde:** Yes, we've got our son and his wife who are going to move there and help us. His mom and I are... I'm 84 and she's 82 and starting to slow down quite a bit and we need their help to, you know, kind of help take care of us around here, part of the time and also, they kind of wanted to move back home from down there in the Boise Valley. So, we are just going to give them that little piece of ground to build a house on there. And, and they'll be home with us.

**Kathy Clarich:** Okay. Does anybody have any questions for Mr. Lynde? Okay, so I'm going to ask is there anyone in favor of this that wants to speak. Eric? Is there even anybody else on?

**Eric Evans:** I think everybody left. I think there's a... There's 7 people on right now, so it looks like we... Well yeah, no, just us.

**Kathy Clarich:** Okay, then I'm assuming there's nobody against this action. I'll close it to public hearing.

**No Proponent Testimony.**

**No Opponent Testimony.**

**Closed to Public Testimony**

**Kathy Clarich:** Any staff comments?

**Tatiana Burgess:** Kathy, the only thing that I want to add is that, that Lynde Dr is, that is currently there's no finalized easements through BLM. However, Mr. Lynde did submit an application, directly to the Bureau. I have spoken to a representative yesterday and they said that they're in the approval process, it is just a matter of allowing the timeline to continue on, on that. He said that there are no reservations, there is no reason for them to deny it and like I said, he concluded that there was no concerns and they will allow that easement to be formalized and be official.

**Kathy Clarich:** Okay, do we want to have that as part of a condition on here? Anything that, that is approved?

**Ed Anthony:** I don't think so, that's up to them, the BLM and him.

**Kathy Clarich:** Ok.

**Tatiana Burgess:** According to the BLM representative he said that since it's already an existing drive, there is no reason for them not to continue on. That's what he says.

Malheur County Planning Commission  
May 27, 2021

**Kathy Clarich:** Ok, alright, that answers that then. Ok What do you guys think?

**Ed Anthony:** I think we should allow it, I mean...

**Kathy Clarich:** Yeah, I don't have any problem with it.

*Bob Quick made a motion to approve the staff report and findings of facts. Ed Anthony 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.*

**Kathy Clarich:** Motion carried, thank you Mr. Lynde you are approved.

**Eddie Lynde:** Well thank you, I appreciate that, you guys.

Applicant: Rural Road Assessment Dist. #4  
PO Box 248  
Juntura, OR 97911

Owner: Rural Road Assessment Dist. #4  
PO Box 248  
Juntura, OR 97911

***Conditional Use Permit for a Variance to setbacks in a Rural Service Center Zone. Planning Department File No. 2021-05-001.***

**Kathy Clarich:** Okay, we got one more thing on our agenda. Rural Road Assessment District No. 4. So, I'm going to read this into the record.

Now is the time to hear the request for a variance to setbacks in a Rural Service Center Zone, Planning Department file 2021-05-001. When called to speak please state your name, address and title (if any) for the record.

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?

Malheur County Planning Commission  
May 27, 2021

- 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 6-8-1 through 6-8-4.

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.

**Kathy Clarich:** Staff report would be Eric I assume this time?

**Eric Evans:** Yes

**Kathy Clarich:** Ok

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

Malheur County Planning Commission  
May 27, 2021

**Eric Evans:** And, so, this one I am actually gonna really quick, I apologize I was working trying to get the applicant on with us. And I believe, Mark, are you there?

**Unknown Person:** He is just pulling up so hang on.

**Eric Evans:** This is the phone number he gave to call him when we were ready, so...

**Unknown Person:** Ok, hang on.

**Eric Evans:** Thank you. Ok so I am going to continue on. Let me get this pulled up, so you can see a little better visual of what we're looking at here, and share my screen. Hopefully the shared screen works good. On the TV that we have here, there's such a delay, it's weird. I think it's a little bit less... Hopefully, it's a little quicker for you guys. So, if you guys can see on the screen, it's tax lot 1700 is owned by the Juntura Rural Road District Number 4. It is a long, kind of sandwiched in between the Highway and 5<sup>th</sup> St in Juntura. 5<sup>th</sup> St is a currently an 80 ft. easement, and just so you guys know the typical easement, everywhere in the County are 50ft., typically 60ft. So, when it was platted out there, it was platted as a really, really wide easement and if you look at the aerial - the road covers like maybe 1/5 of that entire easement and typically probably two cars can barely fit along that. So, it's a pretty small road, very rural part of Malheur County. The easement is kind of overkill. I have talked to the County engineer and surveyor, he has no problems with this application. So, what they're proposing is to not necessarily go into the easement, but, get into that 40-foot set back. So, we have setback even in Rural Service Center, that this is zoned, of 40ft. from any right of way. So, to maintain that setback would be a burden to the Road District, Yeah, and so, and that's from the edge of the right-of-way, not from the edge of the road. So, that yellow line, technically, they would have to be 40ft. back from that. So, they want to build a new shop, and they want it to go basically to their property line. And if you can see, see across Edith St is ODOT up there and currently ODOT has it looks like a shop, maybe some gas tanks and another shop there, the very bottom of my screen, hopefully you guys can see that. And so, they're really looking to basically get into that easement or not get into the easement, excuse me, the right of way, about that right of way, no more than ODOT already is. And so, what they're asking for is a variance from the Planning Commission in order to do so, that's all I have.

**Kathy Clarich:** Ok. So, who's the actual applicant on it, it's Rural Road not ODOT?

**Eric Evans:** So, I actually have never had never done this before, but I was able to use a feature in GoToMeeting and we called, and that's who we were talking to a second ago. So, the applicant is Mark Joyce, with the Juntura Road District Number 4.

**Applicant Testimony:**

**Mark Joyce:** I am on the phone now.

**Kathy Clarich:** OK, Mark, you're just wanting to get to the edge of the right-of-way. Is that correct?

Malheur County Planning Commission  
May 27, 2021

**Mark Joyce:** Yes, yes.

**Kathy Clarich:** Okay, anybody have any questions for Mark? Okay.

**Eric Evans:** These roads are, I think they are just rights-of-way, and the fact that our County Engineer and Surveyor has said that he has no problem with it. I think that's an important thing to reiterate.

**Kathy Clarich:** Okay. Well, if nobody has any questions for him and I don't see anybody else on that might have opposition or proponent for it. Unless, you've got somebody that I'm not seeing Eric.

**Eric Evans:** Nope, I don't, it's just basically us and Mark now.

**Kathy Clarich:** Okay, so...

**No Proponent Testimony.**

**No Opponent Testimony.**

**Closed to Public Testimony**

*Bob Quick made a motion to accept the staff report and findings of facts. Ed Anthony seconded the motion which was unanimously approved by the Commissioners present.*

*Ed Anthony made a motion to approve the variance. Bob Quick seconded the motion which was unanimously approved by the Commissioners present.*

**Kathy Clarich:** Motion carried. Well, Mark, you're good to go.

**Mark Joyce:** Ok, well, thank you all.

**Eric Evans:** Thanks Mark.

**Teresa Ballard:** Thanks Kathy

**Kathy Clarich:** It was a long one that's for sure.

**OLD BUSINESS:**

**January 2021 Minutes**

Malheur County Planning Commission  
May 27, 2021

**Kathy Clarich:** Yea, I think we still have to do the approval of the January meeting minutes. That was the ones that were mailed out.

*Ed Anthony made a motion to accept the January 2021 minutes with corrections. Bob Quick seconded the motion which was unanimously approved by the Commissioners present.*

**Kathy Clarich:** Motion carried. Okay. Eric you said something?

**Eric Evans:** Yes, Kathy, if I could. I know I had... Our office had a couple of people kind of have some concerns about how quick the minutes are coming out. If, I think, I may have talked about it, last meeting, but I was approved for a third position in my office. So, Tatiana is actually going to be interviewed on Tuesday. She's the only applicant for a new position that we created called a Planning Manager in the office. It comes with a fairly decent little raise so, hopefully I can keep her around for a little bit longer and I was also approved for a third position, a Planning Clerk. So, it's going to be similar to days when there were three of us, three people in the office. Part of that proposal is that... I talked to Kelsey and Kelsey's frustrated, she can't, she's got a lot on her plate right now. She's frustrated she's not getting those minutes out as quick as she would like to. And I think that part of this proposal is that the Planning Clerk is going to be, if not doing the minutes 100%, at least, helping Kelsey out, when she can't.

**Kathy Clarich:** Okay. So, you said something about the February minutes were like I don't know, less than two minutes or something like that. I can't remember. We don't have a copy of those so that's right.

**Eric Evans:** Nope, that's correct.

**Kathy Clarich:** Okay. Alright, so then I guess, we'll just have somebody make a motion to adjourn.

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

*Bob Quick made a motion to adjourn the meeting. Robert Kindschy seconded the motion which was unanimously approved by the Commissioners present.*

**Kathy Clarich:** Okay meeting adjourned. All right, thank you. Good night.

Transcript submitted by Nicole Petty and Alexis McDaniel.

Minutes approved by:

Name: \_\_\_\_\_ Date: \_\_\_\_\_