

Malheur County Planning Commission

The Malheur County Planning Commission Meeting was held remotely, via GoToMeeting, on September 23, 2021. Clark Forsyth called the meeting to order at 7:35 p.m.

MALHEUR COUNTY COMMISSION MEMBERS PRESENT:

Kathy Clarich
John Faw
Clark Forsyth
Teresa Ballard
Robert Quick
Chad Gerulf

PLANNING DEPARTMENT STAFF MEMBERS:

Eric Evans, Planning Director
Tatiana Burgess, Planning Manager
Alexis McDaniel, Planning Clerk
Stephanie Williams, County Counsel

Due to Planning Commission Chair being unable to speak, Clark Forsyth gets appointed by Commissioners present as Planning Commission Interim Chair for this hearing.

NEW BUSINESS

Applicant: Shawn & Megan Rice
1896 Graham Blvd, Vale OR 97918

Owner of Record: Shawn & Megan Rice
1896 Graham Blvd, Vale OR 97918

Consideration of the conditional use permit for a non-farm dwelling in an exclusive farm use zone. Planning Department file 2021-08-009.

Clark Forsyth – Now is the time to hear the request for a conditional use permit for a non-farm dwelling in Exclusive Farm Use zone for applicants Shawn & Megan Rice. Planning Department file 2021-08-009.

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 and questions 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.

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4. Do any members of the County Planning Commission have any conflicts to disclose?
If so, state the conflict.

5. Do any members of the County Planning Commission have any bias to disclose?
If so, state bias.

6. Do any members of the County Planning Commission have any ex parte communications, including any site visits, to disclose?

Kathy Clarich, John Faw visited site.

7. Does anyone object to any of the members of the Malheur County Planning Commission hearing this application?

8. Does anyone challenge the County Planning Commission's jurisdiction to hear these matters?

9. Land use statements 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:

The Malheur County Code:

MCC 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 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.

10. Order of Proceeding.

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The applicant will be allocated up to 20 minutes for initial applicant presentation. The applicant may also present up to 10 minutes for final rebuttal. All others wishing to testify will be given 5 minutes each.

Preliminary Staff Report: Read by Planning Manager, Tatiana Burgess.

Tatiana – This is the Planning Department File 2021-08-009, for the applicants Shawn and Megan Rice at 1896 Graham Blvd in Vale, Oregon. The proposal is for a Conditional Use Permit for one non-farm dwelling for the tax lot 1002, situated on the Assessor’s map 18S44E21. Malheur County reference #20151. The property is zoned exclusive farm use. It is exactly 10 acres. It is currently vacant land and it is not irrigated. There are other properties around this parcel that are currently employed in farm use. There is a property directly... an adjoining parcel to this, that currently does have a non-farm dwelling on it, as well. The proposed access will be off Graham Blvd. A DEQ sanitation system will be required. The property is currently within the Vale Rural Fire Protection District, and we do have a letter included from the Fire District. There are currently no water rights on the property. The majority of soils on the property are Class IV, with a portion to the SW with soils of Class VI. The entire subject site of the proposed dwelling is not irrigated. So, the zoning history: in 2006 this subject parcel was partitioned off from the adjoining tax lot 1000, along with the property directly North – tax lot 1001. That was done through a Conditional Use Permit for two non-farm dwellings and two non-farm partitions. The partitioning was recorded back in 2007 through the Malheur County Recorded Instrument #2007-958. While the partitioning itself was executed, one non-farm dwelling was built on only one of them; but on this subject parcel there is nothing built, and the 4-year permit that was approved at the time – had expired along with another 2-year extension that had been granted. So, the permit has been expired since August of 2012. At that time, the parcel did get disqualified from the farm use for the special assessment for taxing purposes. So, right now it is vacant property with the proposal of having a house built on it. That is all I have, Clark.

Clark Forsyth – Alright, I guess at this time we can hear from the applicant. Can you just kind of give us a short, brief description, Shawn, of what you are thinking about doing there, and bring us up to speed where you’re at. And you might be on mute, Shawn.

Applicant Testimony:

Shawn Rice – My wife and I want to place a manufactured home on the property on foundation, and planning on the two of us living there for quite some time, hopefully. Eventually, some out-buildings for some personal animals, horses, raise a beef every once in a while, that sort of thing.

Clark Forsyth – Sounds good. At this time, we would ask for testimony in favor, if there is anybody that wants to speak? And hearing none. We will ask if there is testimony in opposition, anybody on the line would like to speak? Hearing none. I will open the meeting for staff comments.

No Proponent Testimony.

No Opponent Testimony.

Tatiana – I don’t have anything extra to add. It had been approved before, it was just expired. They didn’t build in time, and that’s all we have.

Clark Forsyth – Okay, and would there be any proponent or rebuttal to those comments? Hearing

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none. I will close this part of the meeting to the public hearing, and open it up for the board to discuss. Any questions from the board members?

No Rebuttal.

Closed to Public Testimony.

Kathy Clarich – Do they know about the International Fire Code, that they have to have the turnaround at the end of that 100 ft drive way?

Tatiana Burgess – So, yes, the Staff Report was shared. Ty Falwell is also on the line. I have been working with her on behalf of the applicants, and the Staff Report had been shared with Shawn and Ty, from the beginning. They are aware of the proposed conditions, but of course, you guys can confirm. Shawn and Ty, have you guys noticed the proposed conditions of approval at the end of the Staff Report that was sent to you?

Ty Falwell – Yes, I did see that on there, and we do have that. I am from Clayton Homes in Boise, Idaho. That is where Shawn and Megan are buying the home from, and we do have that in our contract to make sure that is up to code.

Kathy Clarich – Thank you.

Clark Forsyth – Any other questions?

John Faw – I got one question. I know and see that the drive-way in is under a full easement. I'm just wondering if there is a shared maintenance agreement for that, because there are 4 people on that. I don't see anything mentioned of it and I don't remember whether it was done before. What is it... 4 of them that use that now?

Tatiana Burgess – So, you're correct John. The easement was part of the partition plat that was recorded back in 2007. It was platted out, but that was about all the evidence that I have found about the easement. I didn't find any actual language of a contract itself, regarding a maintenance agreement or anything else. We did confirm it with ODOT, making sure everybody can still continue using that, to share it. From ODOT's point of view, access-wise, they were okay with it. Regarding the maintenance itself, I don't know if the owners back then, if maybe they had an agreement that was privately drawn and not necessarily recorded. I don't know that information. I didn't find anything.

John Faw – Okay, I was just curious because I didn't see anything in it about it. One day that will have to be re-graveled and bladed and snow removed and all kinds of good things.

Clark Forsyth – Has it been being used currently?

Tatiana Burgess – Right, so it's currently being used by the properties directly off of Graham Blvd. The house directly right there and I believe, if I recall, there are 4 people using that access point, 4 houses I should say. Again, because even on the plat that's what is called out: a 30 ft wide private easement. So, I don't know if there was any kind of private contract that was drawn out. I don't have that information. There is nothing. No recorded instrument with the County. No recorded language with the County.

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John Faw – Well as long as Rice is aware of that, and the others must be aware of it. It was allowed to happen without it, so okay.

Clark Forsyth – Shawn, have you been made aware of any agreements verbally or anything?

Shawn Rice – No, I haven't. I do know that the gentleman who lives at the end, I believe that's what he does, or he used to do, was gravel work. I have not confirmed it, but I think he is the one who maintains it.

John Faw – Thomas, I know lives at the back of that road and has the equipment, but I don't think, I'm not sure if that was ever his job. I was just making sure you didn't run into a problem down the road when that road goes to pot. Then everybody is looking at everybody else scratching their head, and go: now what?

Shawn Rice – Yeah, absolutely.

John Faw – Because Thomas uses that, as well as the folks up front. Just as long as you are aware of that.

Shawn Rice – Yeah, I am.

Clark Forsyth – Alright, we will... Any other comments from board members?

Kathy Clarich – As long as they are aware of everything, I think we are good to go.

Clark Forsyth – Alright. I will hear a motion to approve the staff report with the finding of facts.

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

Kathy Clarich made a motion to approve the non-farm dwelling. John Faw seconded the motion which was unanimously approved by the Commissioners present.

Clark Forsyth – All right, Shawn! Good luck to you!

Shawn Rice – Thank you very much!

Applicant: Adam Tschida

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1274 SW 11th St, Ontario OR 97915

Owner of Record: Thomas & Pamela Tschida
4638 Power Rd, Ontario OR 97914

Consideration of the conditional use permit for one non-farm dwelling and one non-farm partition in an exclusive farm use zone. Planning Department file 2021-08-014.

Clark Forsyth – Now is the time to hear the request for a conditional use permit for one non-farm dwelling and one non-farm partition in Exclusive Farm Use zone for applicant Adam Tschida. Planning Department file 2021-08-014.

When called to speak please state your name, address and title (if any) for the record.

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If so, state bias.
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John Faw visited site.

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MCC 6-6-7 – General Criteria to Evaluate Suitability

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MCC 6-6-8-1 – Specific Conditional Use Criteria Non-Resource Dwellings in EFU, ERU or EFFU Zones

MCC 6-6-8-2 Specific Conditional Use Criteria Non-Resource Partitions in EFU, ERU or EFFU Zones

MCC 6-3A-3 Allowance of Certain Uses

OAR 660-033-130(4)(a)(D) Agricultural Lands

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10. Order of Proceeding.

The applicant will be allocated up to 20 minutes for initial applicant presentation. The applicant may also present up to 10 minutes for final rebuttal. All others wishing to testify will be given 5 minutes each.

Clark Forsyth – At this time I will have Tatiana read the Staff Report, please.

Preliminary Staff Report: Read by Planning Manager, Tatiana Burgess.

Tatiana – So, Eric is going to share a power-point for everyone to see. So, while he gets that loaded I will make the introduction. This is a Conditional Use Permit Application for one non-farm partition and one non-farm dwelling. Planning Department File 2021-08-014. The applicant is Adam Tschida at 1274 SW 11th St in Ontario. The owners of the record are Thomas and Pamela Tschida at 4638 Power Rd in Ontario.

Eric Evans – Can everybody see this? So, I had a question from one of the Planning Commission members. I thought it would be a good time to kind of go over the criteria when it comes to these non-farm partition/non-farm dwellings. Tatiana actually took the time a while back and did this awesome slide show. So, that will kind of walk us through the steps we have. The question I had earlier this week was about the fact that this piece of property is under 80 acres, it's 74 acres. So, the question is, can we do that when it's under 80 acres, and it's going to result in the parent parcel being less than 80 acres?

1. So, basically if you can look right here, it gives us two options: *On existing parcel created before January 1st, 1993 or through a land division after January 1st, 1993.* So, this is going to be through a land division after January 1st, 1993. That's the one I'm choosing.

2. *Was the parent parcel created before July 1st, 2001?* The answer to this is, yes, you'll have to

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trust me on that.

3. And so, here is where we get to the criteria, or some more of the criteria. *Is the parent parcel 40+ acres?* The answer is, yes. It's over 40 acres, less than the minimal parcel size, but we're just going to say "yes" right here.

4. *The parent parcel is larger than minimal parcel size of 80 acres?* That's not true, so we are not going to choose that one.

5. *The parent parcel is between 40 acres and the minimal parcel size of 80 acres?* Yes.

6. So, in this case, we can approve two non-farm partitions, if each new resulting parcel has at least 90 percent Class VII and VIII soils, here in Eastern Oregon.

7. Then they go through: *Is the parcel under Forest Assessment?* No.

8. *Will the dwelling force a significant change or increase in the cost of farming or forest practices?* That's something you guys will be discussing tonight, and whether you guys feel that it does or doesn't. I am going to say "no" for that answer.

9. *Would the dwelling alter the land stability of the land use pattern?* Again, you guys will be discussing that tonight. I am going to say "no" for the sake of this.

10. *Would the dwelling comply with all local conditions?* I am going to say "yes", and that will result in you guys giving him tentative approval. You guys would be giving tentative approval for this partition and they would continue on in our office.

Does anybody have any questions with that? So, the bottom line, the biggest difference, and the reason that we can do this, between 40 and 80 acres, is because the resulting parcel is going to be 90% covered in Class VII or VIII soils. Any questions?

Kathy Clarich – Did we go through all the slides?

Eric Evans – There is more stuff. What I didn't do, is I did not go through the partitioning section of her slides. So, I kind of skipped that and just went to the other side.

Kathy Clarich – Okay, all I saw was the first and the last, so I just wondered.

Eric Evans – Maybe it wasn't switching very well.

Kathy Clarich – No.

Tatiana Burgess – I'll continue with the Staff Report. So, the proposal will be to partition off 5.7 acres from the parent parcel, and the applicants have waived their right to split a second non-farm partition, they're only continuing on with one. The parent parcel is currently identified as tax lot 1000 on Assessor's map 17S47E08. Malheur County Reference # 6885. The property is zoned exclusive farm use. The parent parcel is currently sized at 71.93 acres, and it's entirely surrounded by farm land. The proposed access will be off of Power Rd, and a DEQ sanitation system will be required. The parcel will be located within the Ontario Rural Fire Protection District. There are water rights on the parent parcel through the Owyhee Irrigation District. The proposed partition will end up with about a ½ acre of water rights, which, the property owner has actually opted to have it moved elsewhere on the parent parcel, to retain the use. We do have correspondence from Irrigation District regarding that, introduced as exhibit 3. The parent parcel is covered in soils of Class III, IV, VI, and VIII. However, the entire site of the proposed partition is completely covered in soils of Class VIII. Regarding the zoning history, per Assessor's records, the current single-family dwelling on the property, has been built in 1972, and there was a machine shed that was added in 1988, and there is no other known zoning history. That is all I have, Clark.

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Clark Forsyth – At this time I would like to open it up for comment for Mr. Tschida. Kind of give us a quick over view what you are thinking there. You are on mute. Go ahead, please.

Applicant Testimony:

AdamTschida – First of all, my battery is getting pretty low. I thought I was going to be able to call in, so if it goes dead... I am up at my parent's house right now, and they don't have an iPhone charger. With regards to the water rights, he has never farmed that area. It's an elevated area and he went and talked to Owyhee Irrigation and they have moved the water rights back to his place.

Clark Forsyth – Very good, thank you. Now we will hear testimony in favor, if there are any? Hearing none. We will ask for testimony in opposition, if there are any? Hearing none. We'll open it up for staff comments, if any?

Tatiana Burgess – I don't have anything else to add.

No Proponent Testimony.

No Opponent Testimony.

No Rebuttal.

Clark Forsyth – Okay, at this time we'll close the meeting to the public hearing and open it to the board members. Any questions?

Closed to Public Testimony.

Kathy Clarich – I have a question. On his Conditional Use Permit, he put that the road will be 15 ft... no, that's the structure. The drive way is going to be 15 ft wide. So, are you going with the plan of putting in turn-outs, then?

Adam Tschida – Yes, I spoke with the Commissioner, the Fire Department Chief. He said since it is such a long road it could be a minimum of 12 ft wide, but there would have to be 2 turn-outs in it for a fire engine to pass.

Kathy Clarich – Yeah, every so many feet you have to have a 20 ft I think, 20 ft turn around.

Adam Tschida – It would be a fairly long road, and I believe there will be two turn-outs in it.

Clark Forsyth – Any other comments, questions?

John Faw – Looks to me like a good place to put a house. I am a little jealous. You have a view to die for up there.

Adam Tschida – Yes, somebody, I believe, tried to build a house there before he bought it from his uncle, and it's a pretty nice place.

Clark Forsyth – Very good. At this time, I will ask for a motion.

Kathy Clarich – Tatiana, were they aware they could do 2 partitions?

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Tatiana Burgess – Correct, yes, I did discuss that with Adam right when they first submitted the application. The property owner Mr. Tschida is aware of that as well, and they waived that right to have a secondary partition done at this time.

Kathy Clarich – Okay, just as long as they know that's their last chance.

Tatiana Burgess – Correct, yes, we discussed that with them.

Kathy Clarich – Okay, thank you.

Clark Forsyth – Alright, I will hear a motion.

Kathy Clarich made a motion to approve the staff report and findings of fact. Bob Quick seconded the motion which was unanimously approved by the Commissioners present.

Kathy Clarich made a motion to approve the non-farm dwelling. Bob Quick seconded the motion which was unanimously approved by the Commissioners present.

Kathy Clarich made a motion to approve the non-farm partition. John Faw seconded the motion which was unanimously approved by the Commissioners present.

OLD BUSINESS:

Approval of transcribed minutes from the February 25th, March 25th, May 27th, June 24th and July 22nd, 2021 hearings.

Kathy Clarich made several suggestions about grammatical corrections to be made to the transcribed minutes.

Bob Quick made a motion to approve the transcribed minutes with the suggested grammatical corrections. Teresa Ballard seconded it. The motion passed unanimously and approved by the Commissioners present.

Clark Forsyth made a motion to adjourn the public hearing. Bob Quick seconded the motion. The motion passed unanimously approved by the Commissioners present.

Respectfully submitted, Alexis McDaniel

Minutes approved by:

Name: Kathy Clarich Date: 10-28-2021