

Malheur County Planning Commission

The Malheur County Planning Commission Meeting was held remotely, via GoToMeeting, on January 27, 2022. Kathy Clarich called the meeting to order at 7:34 p.m.

MALHEUR COUNTY COMMISSION MEMBERS PRESENT:

Kathy Clarich
Linda Simmons
Clark Forsyth
Teresa Ballard
Robert Quick
Chad Gerulf
Rob Kindschy
Ed Anthony
John Faw

PLANNING DEPARTMENT STAFF MEMBERS:

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

NEW BUSINESS

Applicant: Derrick McKrola
3811 Birch Road
Vale, OR 97918

Owner of Record: Derrick McKrola
3811 Birch Road
Vale OR 97918

Consideration of tentative approval for a partition in a Rural Residential Zone. Planning Department file 2021-12-001.

Kathy Clarich – Now is the time to hear the request for a conditional use permit for the consideration of Tentative Approval for a Partition in a Rural Residential Zone for applicant Derrick McKrola. Planning department file 2021-12-001.

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 and questions should not be directed to staff or directly to witnesses.

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3. Do any members of the County Planning Commission need to abstain?
If so, state the reason.
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, and Ed Anthony.

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 7-7 Land Partitioning

ORS 92

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.

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 Director, Eric Evans.

Eric Evans – This is an application for tentative approval for partition in a Rural Residential Zone. Tax Lot 2700, T18S, R44E, Sec. 24; Assessors Map 18S44E24; Malheur County Reference Number 13520. Property is located approximately 2.5 miles from Vale on Graham Blvd. The parcel is 21.88 acres. The property is currently being farmed with a single dwelling on the parcel as well. The parcel is surrounded in entirety by rural residential. The new proposed parcels will be accessible from a new private access easement from Birch Road. A DEQ approved sanitation system would be required for any new construction. The partition is located within the Vale Rural Fire District. No natural hazards identified. The applicant has two options. Either they will transfer the water rights, or they will keep the water rights pursuant to the requirements that the Vale Oregon Irrigation District has required. In 2020 a partition plat was tentatively approved for this parcel. That action will be voided upon approval of this application. Mr. McKrola choose not to go forward with that. He had some neighbors that were in opposition of it, I guess. He decided to kind of go back to the drawing board, and get something that was a little bit more palatable. Those neighbors have also sent some letters of opposition on this application, as you can see on exhibits 4,5, and 6. It was then that I choose to go ahead and send it in front of you guys for approval, because of the opposition. Notice was sent on January 7th to all of the adjoining neighbors, including the people that wrote in opposition. That's all I have.

Kathy Clarich – Okay, so, we will go to Derrick. You have 10 minutes to tell us your plan.

Applicant Testimony – Derrick McKrola, 3811 Birch Road, Vale, OR 97918

Derrick McKrola – So, as stated this subject is zoned Rural Residential for about 30 or more years, as far as I know, since the last Planning & Zoning maps. So, the Planning & Zoning Rural Residential even though the property can be farmed, it is not really recognized as a farm resource, it is recognized as Rural Residential. It is intended to be divided. Records indicate approximately 21.88 acres, but the survey exterior boundaries, including the road right away, is a little over 24 acres. What that means is, according to Malheur County Code for Rural Residential property, you can divide that into minimum 2-acre parcels or lots. I can get as many as 12 in there if I wanted to. That was my original approach. My previous approve partition, which is no longer valid. I started out with 2 parcels. I was going to do 2 parcels a year, was my plan. I was going to parcel the existing house that is there, plus another one. Those were 2 acres at that time. Neighbors in opposition pointed out a few things and I put a pause on that, to see if I could help appease them. So, this is what the new layout is showing. This is 2 pieces of potentially 7. That's only going to work for me if we can get the water right plan to work. The challenge we have with the water right division plan, is that Vale Oregon Irrigation District will not take new patrons. They will only deal with one patron of the original point of delivery. So, if the water right is kept the burden is on the developer to assign a system manager. So, if I can make that work I will try to make the subdivision to 3-4-acre division. If I can't get this water right to work I am probably going to revert back to the larger division, 2-acre parcels, because having 2-acre parcel or something more then 2-acre parcel, with the water to water a pasture is just not beneficial to any land owner. So, there was some concerns that were brought up. I have considered the site distances as far as approaches to the parcels. The road way you see there was

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the best option there, and that's almost directly South of the existing drive way, to the West of this subject property. The County Road Department sees no issues with this approach. Putting it anywhere else it gets a little tighter on this side. To address the concerns in Zach's letter, point number 1, what they saying with the Vale Irrigation District (Inaudible) 6-7 division plan, and that's just part of foresight to see if the water plan would work. Right now, we have these 2 parcels to start with. Number 2, I am not sure where that 5-acre parcel comes from, but the County Code allows you to divide Rural Residential in a minimum of 2-acre parcels. Number 3, I am well aware of the combined Aquifer where the water is very (Inaudible) to none. I currently reside West of this subject property. Nine years ago, there was an existing well that was only 80 ft deep and that was a combined Aquifer, and its barley was using 5 gallons per minute, which was not enough to qualify for home loan. So, I had a new well drilled. We hit a vein approximately 150 ft down, we drilled 10 ft past that, and we got (Inaudible) water level at 40. So, wells are granted and permitted through State of Oregon Water Resource Department, as far as we know there is still being granted for domestic use, and my well yield 45 gallons per minute, and the statistics all depended on what Aquifer you're in, and your pump, so I don't know how to answer that necessarily. For those who are in an uncombined Aquifer, (Inaudible) water especially now that the Vale irrigation water is piped none of that water is making it in the uncombined Aquifer. I have had issues over the 9 last years of uncontrolled pets. I have had a neighbor dogs got out of their place and attacked my chickens. I recognized that can be an issue. I have lived there 9 years and that's one incident that happened. I don't know how to manage that. That is just land owners home insurance liability thing to manage. Dotson's were concerned about there being a subdivision. It's been there for 30 years Rural Residential so that's bound to happen. I live right there on the corner of Birch Rd and Graham Blvd. and the traffic varies, seldom you see 2-3 cars at that stop sign. I don't see there being an issue with additional homes, especially utilizing the plan, prior road way there, or the homes having their own existing driveways. They won't necessarily come directly off Birch Road, except in future when I create parcel to the North, and that will be something to address later. And for the County Road Department to also approve that, at that time. I think that pretty much addresses most of the comments. I will close in, ask if there are any questions?

Kathy Clarich – Well, my question I guess, and you could probably answer is, if you go to drilling wells and find out that there isn't the water, then what are you going to do? Just not develop the rest of the property?

Derrick McKrola – I don't perceive that being an issue based on the water logs there, and permits still being issued. Just knowing there is water there you just have to be in the right vein of Aquifer.

Kathy Clarich – I don't know what it is for a house. We get 300 gallons, so I don't know when you say 40 to me it seems like that's not very many.

Clark Forsyth – 40 is good.

Derrick McKrola – So, most lenders require a minimum of 5 gallons. My house yields 45 gallons per minute, and this existing home on this subject property yields 15. I don't see an issue.

Ed Anthony – So, what happens if you drill a well and the neighbor goes dry, because you drilled your well? What are you going to do about that?

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Derrick McKrola - Everybody has the same right to the depth they can drill to. I can't control what that neighbors drill and put their pump.

Ed Anthony – What I am saying is if I drill a well and I take the neighbors water over, you shut my well down, because I was the last one to drill.

Eric Evans – They could, but we have actually met with the Watermaster about this. With the opposition as well. They wanted to meet with him, and that's never happened that they go and shut somebody's well off. They can go through your well log and see you are the last well, but that is not something that happens. Realistically, he stated that everybody has the right. The same right to that water as everybody else. Nobody's right is greater then somebody else's.

Ed Anthony – Really?

Eric Evans – Yes.

Kathy Clarich – That's a new one.

Eric Evans – So, now it changes with some things, right. So, when we are talking about water rights. The thing is that these domestic wells are exempt, they have an exemption for domestic wells. So, like for instance, we had conversation with Huntington Travel Plaza, right? When you are securing commercial water rights it's a whole different ball game.

Ed Anthony – That just seems interesting. If he drills a new well and mine goes dry, I can no longer (Inaudible) what's going to happen?

Eric Evans – So, there is some conversation, and they didn't love the answer to that, honestly. But, you know, if you have an inadequately drilled well then, I am not sure water resources is going to do anything about that.

Ed Anthony - It wasn't inadequate when it was drilled.

Eric Evans – Well, I mean if you have a 50-year-old well, then I mean, that is really shallow. What we see around here a lot is that these wells they are really shallow, and going to pivots instead of flood irrigation. We are seeing some of that upper Aquaphor is drying up. We are having issues. So, I mean.

Clark Forsyth – They put a new law now saying you have to go through the first water level now to make flood irrigation. Can't take the top water anymore. They were nervous about that when we built our house. My neighbors were very skeptic. It actually ended up our neighbor wanted to hook onto our well. He didn't have any water to begin with. We ended up going 250 ft deep. We went through and just kept going. Which is an expense. So, that is something you will have to consider. When you start dividing those.

Chad Gerulf – So, your house Derrick is right next to the parcel.

Derrick McKrola – Yes, just to the West of that roadway right there.

Chad Gerulf - Okay. So, if they drill a well it's going to be your well that gets drawn down, and

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you're not concerned about.

Derrick McKrola- No.

Kathy Clarich – The one piece he is dividing off of it already has a house on it, and he said it's only like 15 gallons for it.

Derrick McKrola – Yeah, something like that.

Eric Evans – Did you submit that?

Derrick McKrola – I didn't.

Eric Evans – Okay.

Derrick McKrola – I did pull a well log. About a mile from here there was another land owner in the last couple years who drilled a well, and they yielded 60.

Teresa Ballard – I had a question. I think it was in the Irrigation District statement about the establishment of an HOA.

Derrick McKrola – Yeah, they have that option. That being one option, or 2 HOA a way where the owner manages the system. I have looked into HOA from my perspective of a Rural Residential home owner.

Teresa Ballard – My question really related to the road in there and maintenance.

Derrick McKrola – Yeah, there being more than one owner on that roadway, there will need to be a road maintenance agreement.

Eric Evans – At that is the proposed condition of approval. I proposed that as condition of approval.

Teresa Ballard – I think you just create, in Malheur County, we know how wash board roads get. So, you know I think that could be a contention with the neighborhood being so close together there.

Clark Forsyth – How long is that?

Derrick McKrola – It's about 500 ft.

Clark Forsyth – okay, so it's not like way long. Is there any consideration of the value of the existing homes around there, and what you will allow on these parcels? Manufacture homes, or are there square footage minimum? I mean I could imagine if you moved in a bunch of mobile homes you probably could have, limited to what you confide it to, even at that.

Derrick McKrola – Personally, I'm not going to make any promises, but I think I may have a CCR written up. I certainly don't want to see a manufactured home. I want it to be consistent with the neighborhood.

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Clark Forsyth – Yeah exactly. And if there is manufactured homes there, I don't have a problem with it one way or another, it's just a question. If I were one of the neighbors I might consider.

Teresa Ballard – Well, we have approved at least one think I have known of in the last 2-3 years that we approved it, people dragged in their junk, and I don't even think they have dug a well, and it was just a deterrent to the area. You don't want to live next to that. The people who are against it don't want to live next that. I don't know how you control that.

Derrick McKrola – I think that would be one way to control that is a CCR. I am pending that way. I don't want to make any promises. Now, I may have to especially for the irrigation plan, because that's got to be drawn out, for system manager, or between Vale Irrigation District and the owners of the parcel.

Eric Evans – Yes, so, Vale Oregon Irrigation wants one check. One person. So, you are not going to have 12 or however many 10 people for the water bill, and they are not going to give different points of diversion off that it's just going to be one. So, some how you are going to have to have an agreement to share that water, and how it's going to be utilized.

Clark Forsyth – But, Vale is okay with that?

Eric Evans- As long as you don't change the diversion and he follows the conditional of approval. I want something from them that says they are happy with whatever...

Clark Forsyth – I agree with you. If you don't have water out there, you just might as well just leave it that way it is.

Derrick McKrola – Right.

Kathy Clarich – My son lives in Payette and it use to be farm ground where they put in the subdivision he is in now. They have a HOA, and the HOA is just to cover the water, basically is what it is. They just have a little thing that comes up in the back where the canal used to go, and they just have a filter on it, and they turn it on there, and away they go. They get water for watering the lawns. It is only water for watering the lawns, it's not for washing cars and all that stuff, but it works really good for them. Everyone has just a fee they pay.

Clark Forsyth – It works really good for us.

Chad Gerulf – Do you guys have a fee to pay up there?

Clark Forsyth – Yes, we just pay the Irrigation District, but that whole subdivision is on Owyhee Water.

Derrick McKrola – I was looking at the CCRs.

Clark Forsyth – It seems to work well. It would be a little different for you, because you would be managing all that water.

Eric Evans – And here is the thing, we hear from the Irrigation District that they will never approve something like that again. They are going more towards what they're talking about.

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Clark Forsyth – Makes sense, because nobody on our street really wants to take full responsibility when you rack up bill.

Kathy Clarich – Any other questions?

Clark Forsyth – What is total development, how many lots? If you were to develop the whole thing.

Derrick McKrola – How much could I? It could be divided into at least 12. However, it may be 11, because that original (Inaudible) because I can make that one lot with that (Inaudible) 3.99. Keep that North part and irrigate that piece and act like a buffer. I want to make a correction to the Staff Report. There is farm land just to the North. There is farm land to the South. It's pretty much that quarter mile strip right there, quarter mile to the West of me, and quarter mile strip all the way to Vale is Rural Residential, basically on the North bench of the Graham Blvd Road.

Kathy Clarich – So, not all the property is?

Eric Evans – No, all of it is. This is that strip, right? It goes all the way into Vale and a quarter mile this way.

John Faw – Well, when they originally did this. Everything North of Graham Blvd was all 5 acres Rural Residential. Then when LCDC came in they left this strip for whatever reason.

Kathy Clarich – Anymore questions for Derrick? If not, we will go to...okay, *6 if you need to unmute. I am asking for any body who has testimony in favor of this, or proponent of this action?

Eric Evans – We don't have anybody online that would. Oh yeah Zach's were online.

Derrick McKrola – You will have to follow up with them tomorrow. I have a phone number for them.

Kathy Clarich – Were they in favor for this?

Eric Evans – No, they were against it.

Derrick McKrola – Here is their number.

Eric Evans calls the Zach's to ask if they would like to speak, and to reconnect online

Eric Evans – Just so you guys all know Kathy had requested some testimony in opposition, so I just wanted to reach out with you guys to see if you wanted to speak?

Kathy Clarich – I need you to state your name and address.

Opponent Testimony:

Mike & Theresa Zach, 3826 Birch Rd, Vale, OR 97918

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Mike Zach – Our opposition is, my main concern is, the water to begin with. On the Aquaphor here in places is questionable, and if we are drawing more out. However, I do believe that Oregon law does cover that, so that the well is not required to be shut off. Another thing is pressure of people of our livestock operation, is going to be negative. And any pets that come in livestock are going to be bothered by predators. And the other thing is once you start getting that many people, we are going to have problems with trespassing, and that's just a given fact. Once you get people pressure like that we are going to have people wanting to trespass, that's all there is to it, it happens. So, regardless you have it posted or not.

Kathy Clarich – Okay, so anything else?

Mike Zach – No, that covers my concerns right there.

Kathy Clarich – Okay. Alright, thank you very much. Was there anybody else that was in opposition? Are there any staff comments?

Eric Evans – I don't have anything.

Kathy Clarich – Okay. So, Derrick would you like to speak to their concerns?

No Proponent Testimony.

No Rebuttal.

Closed to Public Testimony.

Kathy Clarich – So, what's your guys thoughts?

Ed Anthony – It's subdivided all up that road. I don't think it's going to make any difference.

Chad Gerulf – I don't see a problem with it.

Kathy Clarich – The only concern I have with it, is the water, and that's not ours to take care of.

Clark Forsyth – I would highly recommend the HOA though or the CCR. Get that ironed out.

Chad Gerulf – For the irrigation water?

Clark Forsyth – Yeah, the irrigation, your road, anything that is going to be shared. What you are going to allow in the housing development. Square footage minimum.

Linda Simmons – Because if that gets set up first instead of halfway through.

Clark Forsyth – Yeah, you don't have to worry about it then.

Kathy Clarich – So, what do we have for conditions of approval.

Eric Evans – The very first condition actually is unequal, because that expired after 6 months anyways. So, I would say we could eliminate proposed condition number 1.

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Kathy Clarich – So, number 2 on it says adequate access should be secured for each individual partition. Approach for the sites should meet all requirements of the Vale Rural Fire District. So, like the turn outs and the rest of that stuff they required.

Chad Gerulf – So, you have to be 25ft wide to satisfy the Fire Department with a turn-a-round at the end, correct?

Eric Evans – Something like that.

Kathy Clarich – And there is something about a 500 ft distance.

Eric Evans – Yeah, but if it's like a road width then you don't have to have turn outs.

Kathy Clarich – So, it depends upon the width what you have to have.

Chad Gerulf – It sounds like you guys did your due diligence with the water. I mean I don't know what more you can do, but sit down with them and go through the options there, or get his thoughts on it.

Kathy Clarich – It says the applicant must meet the requirements of the Vale Oregon Irrigation District, we already talked about that. Adequate fire break should be constructed and maintained to a minimize danger of potential wildfire. A road maintenance agreement must be filed with alongside the partition plat. That's all you had on it. Do we need to have the farm statement in it?

Eric Evans – I don't think so. Stephanie, we don't need a farm statement on Rural Residential?

John Faw – I don't think that would apply, since this is Rural Residential.

Eric Evans – I am certain it doesn't.

Kathy Clarich – Well, if you find out it applies.

Eric Evans – Okay, it doesn't. I am certain.

Kathy Clarich – Okay, so, what do you want to do?

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

Ed Anthony made a motion to approve the tentative approval for a partition in a Rural Residential Zone. Linda Simmons seconded the approval which was unanimously approved by the Commissioners present.

Eric Evans – The tentative approval, the final approval, he has to file the final partition plat within the 6 months.

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Applicant: Stoney B. Schulties
738 Enterprise Ave.
Nyssa, OR 97913

Owner of Record: Stoney B. Schulties
738 Enterprise Ave.
Nyssa, OR 97913

Consideration of the conditional use approval for two non-farm dwellings and two non-farm partitions. Planning Department file 2021-12-018.

Kathy Clarich – Now is the time to hear the request for a conditional use permit for 2 Non-Farm Partitions and 2 Non-Farm Dwellings in a Resource Use zone for applicant Stoney B. Schulties. Planning department file 2021-12-018.

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, disclose conflicts, disclose biases or disclose any ex parte communications or site visits?
If so, state the reason.

Kathy Clarich, Bob Quick, and John Faw.

4. Does anyone object to any of the members of the Malheur County Planning Commission hearing this application?
5. Does anyone challenge the County Planning Commission's jurisdiction to hear these matters?
6. 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

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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 Non-Resource Partition in an EFU, ERU or EFFU Zone.

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.

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 Director, Eric Evans.

Eric Evans – This is a Conditional Use approval for two non-farm dwellings and two non-farm partitions. Tax Lot 1000, T20S, R46E, Sec. 2; Assessors Map 20S46E2; Malheur County Reference #9973. Property is located right at his house 738 Enterprise Avenue, Nyssa. Zoning is Exclusive Farm Use, C-A1. The parcel is 158.04 acres. The property is currently being farmed. The new parcels will have no water rights. The parcel is surrounded in entirety by farmland. The new parcels will be accessible from an existing approach from Fairview Road. A DEQ approved sanitation system would be required for both of the proposed dwelling. The sites of the proposed non-farm partitions are within the Nyssa Rural Fire District. Although wetlands have been identified on the property (See attached), there will be no disturbance of these wetlands. In 2020 a property line adjustment was completed in order to transfer a property to a different location. This property line adjustment did not have the effect to qualify the parcel for the siting of a dwelling. The parcel previously had this right. Therefore, it doesn't change the creation date according to statute. Therefore, they still preserve the right to do the 2 non- farm partitions.

Kathy Clarich – Stoney is on there and you are representing him? So, you want to start first?

Applicant Testimony – Derrick McKrola, applicant's representative.

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Derrick McKrola – I am Derrick McKrola, reside 3811 Birch Road, Vale Oregon. I am representing Stoney Schulties on this application. So, this should be pretty straight forward. Parcel to the North and East just to the North of that odd shape there in the middle of TL 1000. Is where Stoney desires to build a new house for himself and his wife. His existing residence is will remain a farm dwelling. His son will reside in that house, and he works in the farm. And of course, Stoney will correct me if I'm wrong. Also, as an opportunity for this partition is create a second non-farm dwelling and parcel just to the North West corner of that TL 1000. Both of these parcels will have a very long driveway. First one, will kind of follow an existing approach off Fairview Road, and follow it down low to existing road that was created for this TL 1200 and continue to use that road and extend it out, and have an easement to get through there to access the parcel there. We want to recognize that this big piece here where the house will be sighted, it's kind of poor soil right there. It had been farmed, but also recognize this back-spot TL 900 does not exist. Stoney plans to put in a new pivot, and you should have a map there showing where he is taken this out and then putting the water rights along that pivot. So, this last one you are seeing on the screen had not been updated.

Eric Evans – That's the PLA that hasn't been reflected on our GSI Map yet.

Derrick McKrola – So, the home sight here and home sight up there. There is a (Inaudible) that there was a road easement of record. That's the same road we are going to extend it on the plat to come up here through this parcel, which he owns. For this home sight here, it's going to go through the existing residence, along the existing road on this side of the canal. We couldn't get there from this direction or any other direction, without disturbing the existing farm.

Kathy Clarich – so, the one that comes off of Fairview, part of it is like, it runs after you get up here a way, it looks like it's on like, I don't know if it's just ditch bank or anything. It looked like a ditch bank road when I went up and looked at it.

Derrick McKrola – Yeah, it's low profile, it actually follows along the North side of the canal.

Kathy Clarich – So, it's not part of the canal.

Derrick McKrola – Right.

Ed Anthony - So, is he going to have to make turn outs on those roads? Is there enough space to make the turnouts?

Derrick McKrola – Yeah. And we will draw up the easement to make sure that works.

Kathy Clarich – So, it's not a canal and it's nothing or ditch company would be using or anything?

Derrick McKrola – It's not in the deed title. I don't think there is a designated right away for it. I think it's actually, Stoney can correct me if I'm wrong, that's it's a drainage ditch.

Kathy Clarich – The only reason why I'm asking is if it's under Owyhee they had a big fit on ours, and you can't use the ditch bank roads for access to house. You can cross over it, but can't use the road.

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Derrick McKrola – So, this existing easement has already known record, could make some improvement out here off to the North.

Eric Evans – Was the easement on the deed?

Derrick McKrola – For these parcels it would be.

Eric Evans – So, it was an ingress/egress easement created for tax lot 1200?

Derrick McKrola – Yeah. So, that TL 1000 is subject to that easement.

Kathy Clarich – The easement going into the, I guess parcel 3, is, they are going to go over to the existing road and go on out?

Derrick McKrola – On the other side on the farm road.

Kathy Clarich – This one right here? Okay. And that one there will have room for all the turn outs they are going to need?

Derrick McKrola – Stoney are you there?

Stoney Schulties – I am. I am Stoney Schulties at 738 Enterprise Ave, Nyssa, Oregon 97913. And yes, the one on the South side of that drain ditch there is an existing road currently, and there is room for turn outs on it. On the North side there is plenty of room to develop those turn outs that are a concern.

Kathy Clarich – Lots of gravel.

Derrick McKrola – Stoney do you have anything to add?

Stoney Schulties – I appreciate Derrick you presenting that. I have been working with Derrick on this, and currently the farm is having our kids starting to come back to the farm, currently, and we are just short of housing for all them. This is a way we can start developing that in time for operations to continue to grow, or continue to sustain our farming operations. Yeah, I think Derrick has explained it pretty well. It's pretty straight forward. I have lived right on Enterprise for quite a few years, and right on that kind of a hillside is quite busy road, and so we are trying to get back off the road a little way to build this new dwelling. I think that is it.

Kathy Clarich – Thank you. Anybody else have any questions?

Stoney Schulties – It is called Lockett Gulch, it's not an irrigation canal, it's just a drainage. So, it's just a water way they use, the irrigation company, dumps water in the spring and in the fall out of the Hyline Canal, and at different times of the year it is used just as a dumping down to the Snake River. It is not a maintained water way to deliver water to anyone.

Kathy Clarich – You are going to live on the 1.8 acre one, is that the right one?

Stoney Schulties – Correct.

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Kathy Clarich – If nobody has questions we go on to, is there anybody on the line who is in favor or proponent in this action that would like to speak? Okay, if there is nobody in favor with it. Is there anybody in opposition of this action? Okay. So, there is nothing to rebuttal. Is there any staff comments?

Eric Evans – The only thing I would add, as I was looking through this, I don't think I have a road maintenance agreement on the proposed condition. I do have some about the requirements in Nyssa Rural Fire District, but I would definitely suggest that we put a road maintenance agreement on there as a condition of approval.

No Proponent Testimony.

No Opponent Testimony.

Closed to Public Testimony.

Kathy Clarich – What do you guys think?

Ed Anthony – Go for it. As long as it's not going to be used for anything else.

Kathy Clarich – Okay, that's what you want to do.

John Faw – Makes a lot of sense to me. Let's do it.

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

Ed Anthony made a motion to approve 2 non-farm dwellings. Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present.

Ed Anthony made a motion to approve 2 non-farm partitions. Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present.

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Applicant: Jimmy Simpson
709 Owyhee Ave.
Nyssa, OR 97913

Owner of Record: Jimmy Simpson
709 Owyhee Ave.
Nyssa, OR 97913

Consideration of the condition use approval for a 15 space RV park on Exclusive Farm Use (EFU) zoned land.

Eric Evans – This next one is going to be easy. This afternoon I got a request from Mr. Simpson’s attorney asking for a continuance. In order for them to adequately address some of the deficiencies in the application.

Ed Anthony makes a motion to continue this to February 24th, 2022 at 7:30 Pm. Teresa Ballard seconded the motion which was unanimously approved by the Commissioners present.

Presentation by Adele Schaffeld, Malheur County Building Official – Spoke to Commissioners about the Building Department website. Explained where you can get forms, see what is going on with projects in Malheur County, and where you can get ready to go plans for certain structures.

OLD BUSINESS:

Approval of transcribed minutes from the October 28th, 2021 hearings.

Ed Anthony made a motion to approve the transcribed minutes. Chad Gerulf seconded it. The motion passed unanimously and approved by the Commissioners present.

Ed Anthony made a motion to adjourn the public hearing. Chad Gerulf seconded the motion. The motion passed unanimously approved by the Commissioners present.

Respectfully submitted, Alexis McDaniel

Minutes approved by:

Name: Kathy Claunch Date: 3-4-2022