

## Malheur County Planning Commission

The Malheur County Planning Commission Meeting was held remotely, via GoToMeeting, and in person, on October 27<sup>th</sup>, 2022. Kathy Clarich called the meeting to order at 7:31 p.m.

### **PLANNING COMMISSIONERS PRESENT**

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

### **PLANNING DEPARTMENT STAFF MEMBERS:**

Eric Evans, Planning Director  
Tatiana Burgess, Planning Manager  
Julie Bromley, Planning Clerk  
Stephanie Williams Malheur County Counsel

### **OLD BUSINESS**

**Applicant:** Oregon Trail Mennonite Church  
839 Onion Ave  
Ontario, OR 97914

**Owner:** Oregon Trail Mennonite Church  
839 Onion Ave  
Ontario, OR 97914

***Consideration of a Conditional Use Permit for Oregon Trail Mennonite Church private school in rural residential zone.***

Kathy Clarich – So, first thing on our agenda is old business – Oregon Trail Mennonite Church.

Eric Evans – Yes, I did receive an email from Russell Koehn, that represents the Mennonite Church. And he, again, is working on an answer to this. So, he did ask for a continuance for the January 2023 meeting. With that said, if you guys choose to grant another continuance tonight, it has to be the last one. We are obligated to give a final answer within 215 days. So, this will have to be the end of the continuances. So, either you're gonna have to approve it, deny it, or they are going to have to withdraw the application.

Kathy Clarich – Ok.

Clark Forsyth – If they withdraw, how long do they have to wait to refile?

Eric Evans – They don't have to wait. So, if you deny it, they actually have to wait 6 months; so it would be in their best interest to withdraw it, if they're not ready.

Kathy Clarich – Ok. So, I need a motion, if you want to do a continuance until the January 23<sup>rd</sup>, 2023 meeting.

***Clark Forsyth made a motion to approve the request to continue the hearing to the January 2023 hearing, at 07:30 pm. Linda Simmons seconded the motion which was unanimously approved by the Commissioners present.***

**Applicant:** Janine Grund  
111 Duncan Ave  
Middleton, ID 83644

**Owner of Record:** Rosalie Johnson  
Kimberly Buxton, Personal representative  
2571 S Wise Way  
Boise, ID 83716

***Consideration of a Conditional Use Permit for a non-farm dwelling in an exclusive farm use zone.***

Kathy Clarich – So the next thing on it, is Janine Grund and I think she has withdrawn hers?

Tatiana Burgess – That's right. She did submit a letter to us a few days after the September hearing and she did say that she would like to formally withdraw her application for a conditional use permit. So, she is off the agenda at this point.

Kathy Clarich – Ok. So, let's move on to new business. The first thing is the Psilocybin.

## **NEW BUSINESS**

***Psilocybin Ordinance: a recommendation to County Court to adopt Ordinance 230 that regulates the psilocybin land uses in the unincorporated areas of the Malheur County.***

Eric Evans – This is going to be just like any other... We would follow generally the same public testimony as we would... This is a legislative, but we run it like a quasi-judicial hearing. So, you want to use one of your procedures and read that, but then switch stuff out. If you would like, I'll do that?

Kathy Clarich – Yes, why don't you go ahead, because I have all these different ones... This is a

farm use one.

Eric Evans – That doesn't matter. So, now is the time to start a legislative action where the Planning Commission will make a recommendation to County Court.

1. There is a general time limit for testimony of 5 minutes for any proponents or opponents. Staff will actually act as the applicant, because Malheur County is the applicant here and I'm not going to take 20 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.
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, about this matter?
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?

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

Eric Evans – So, just the background. On November 3<sup>rd</sup>, 2020, Oregon voters approved ballot measure 109, which is the Psilocybin Program Initiative, which legalized psilocybin in Oregon, subject to the criteria noted in the Measure and subsequent rule making. Psilocybin is the component that creates hallucinogenic effects in “magic” mushrooms. Measure 109 automatically opts the cities and the counties into the psilocybin program. So, when we were having conversations about the marijuana, we were automatically opted out and we had to opt in. For psilocybin – it's backwards. So, if we don't take an action, then we are automatically opted in. So, that said, the County, for anybody that got their ballots, there is an ordinance on the record to ban psilocybin within the unincorporated areas of Malheur County. That would be all of the types of facilities in regards to psilocybin. So, what this does – it doesn't have anything about banning it or not banning it. We have a certain time period that we're statutorily required to meet, when it comes to passing these legislative actions. This is legislative, because it's going to be an ordinance. So, there is no way that we could wait till after the election next week and then turn around, meet our statutory requirements to notify DLCD of this rule making procedure, get our notices out to the public about this, turn around have this meeting, and turn around, have County Court's two meetings that are required for these. So, this goes into effect January 1<sup>st</sup>. So,

without some kind of failsafe, then it would be, kind of “do what you want”. So, what these are – TPMs – Time Place Manner, that would be in place in case the voters decided to not ban psilocybin within Malheur County. So, other jurisdictions have chosen not to do that and kind of decide what they’re going to... you know, just to wait, and throw something, emergency, together. Us, as staff, have decided that we would put some TPMs in place, just in case the ban isn’t approved by the voters. Does anyone have any questions or concerns, anything? You guys have had these packets for a long time. I don’t know if I will get into the meat of what each one of these TPMs are saying. It pretty much, out-right, doesn’t allow psilocybin on EFU and only in certain places, if you guys read that.

Kathy Clarich – I have a couple of questions for you Eric. Like, on page 3: it talks about the manufacturing of it and the chemical synthesis. So, do you know what kind of chemicals and how are they disposed of, that they are using for it?

Robert Quick – You’re taking about waste water.

Eric Evans – On the ordinance itself?

Kathy Clarich – On the ordinance itself.

Eric Evans – I guess I also didn’t also say this, and I’ll get to your question as I am talking. I’ll kind of, read through this. So, what our job here tonight is, to not approve these TMPs necessarily. Not approve this ordinance. This ordinance goes in front of County Court and County Court hears this. Our job here tonight, is to make a recommendation to Count Court. It’s whether you guys want to change anything in this, then that will be part of your recommendation on what will go forward to County Court. So, there is different kinds of facilities that you can get licensing for. All the licensing goes through Oregon Health Authority. And one of the other bad parts about this is we don’t even know what kind of administrative rules Oregon Health Authority is putting in place for this inactive measure. I don’t know what they are going to say about it. So, we want these in place, in order to make sure that it’s not the wild-wild west with psilocybin. So, there is certain different kinds of licenses you can get through Oregon Health Authority. You can get it for the service centers – that would be the place where you... the facility, where you receive this dosage. Manufacturing – would be the growing of it and producing of it. You have the treatment centers, you have the manufacturing. I think those are the two ones that actually are within the TPMs, ‘cause the other licensing are the people that administrate it and I can’t remember what that’s called and one other thing... So, did that sort of answer your question?

Robert Quick – Ok, let me clarify one thing. You used the word “ban” the psilocybin in the County. As I understand, it is now classified as an agricultural crop? Yes? Under the state law, under that, it is considered an agricultural crop.

Eric Evans – I don’t know that it is.

Linda Simmons – It is. That’s what it says.

Eric Evans – It’s allowed on agricultural land.

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Robert Quick – No, no, it says clearly here, page 4 under Findings, Agricultural Lands: “The statute clearly permits the production of psilocybin producing fungi in EFU zones”.

Eric Evans – Right, the statute does allow it to be grown and produce it on EFU. Right.

Robert Quick – Right. Ok. They allow small scale processing of farm crops, provided that the facility uses less than 10,000 square feet for its processing areas. So, are we here talking about being able to grow psilocybin, or are we only talking about the manufacture/distribution of the psilocybin?

Eric Evans – Growing, manufacture/distribution. Both.

Robert Quick – Everything?

Eric Evans – Yeah.

Robert Quick – OK.

Eric Evans – So, the growing of it... and Stephanie maybe can chime in too? The growing of it is... would be allowed. So, it is... psilocybin, it's actually in... it's what I was looking for. Is the “D. Psilocybin manufacturing”?

Robert Quick – Right.

Eric Evans – It's a permitted use, subject to special standard in EFU, ERU and EFFU zones. And then manufacturing is prohibited in all other zones.

Robert Quick – Is the growing considered manufacturing?

Eric Evans – So, if you look at the definition of “psilocybin manufacturing” on page 3, it means “the manufacturing, planting, cultivation, growing, harvesting, production, preparation, propagation, compounding, conversion, or processing of a psilocybin product, either directly or indirectly, by extraction from substances of natural origin or independently by a means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the psilocybin product or labeling or relabeling of its container”. So, that would be the growing of it, producing, whatever that form of psilocybin is, that they're going to give their customers, their clients.

Robert Quick – Ok.

Eric Evans – The service centers wouldn't be allowed in EFU, ERU and EFFU zones. They're only allowed in commercial zones, subject to the specifications of performance standard set forth in this notice. And then, another one of those deals, is the psilocybin testing laboratories. We say they may not be conducted in conjunction with psilocybin manufacturing or service centers and they're only permitted in light-industrial zones and they're prohibited in all other zones.

Robert Quick – In my readings, the reason I'm asking the question is that, could it be interpreted that they could still grow it in Malheur County, but they could distribute it in a county that did

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not have the prohibition of what we're setting up here?

Eric Evans – So, the ban would... So, you're kind of talking two different things here, right? So, the ban that I was talking about has nothing to do with what we are talking about tonight. The ban is out to voters right now. So, it's actually on, if you live in Malheur County, it's on your ballot.

Robert Quick – We voted. I know. We've been studying.

Eric Evans – So, that's where the ban would come into effect. Where this would come into play is, if the voters did not pass that ban, if they voted "no" on that measure. So, if they vote "no", then we need Time Place and Manner to be able to direct how it is used in Malheur County. How and where and the time, place, and manner of how they can do it. So, to answer your question – this doesn't really address the ban. This is if the ban doesn't go into effect, then, yes you can grow it in Malheur County on EFU.

Roberts Quick – But we can prohibit the service center. Are they separate?

Eric Evans – So, there is separate licensing, yes. They'll require separate land use compatibility statements, that's, kind of tells OHA whether it's allowed on that particular piece of property or not.

Robert Quick – Got it.

Kathy Clarich – So under the Land Use one, on page 7, I have some questions.

Eric Evans – Is this on the ordinance?

Kathy Clarich – Yes. It says "one state registered service center per commercial sight. No cooperatives or co-locating of facilities". But, can there be a limit on how many we can have altogether? I mean is that possible for there to be a limit so we don't have one coming on every piece of property in the County?

Linda Simmons – It doesn't say that anywhere.

Eric Evans – So, one thing I'll say is that part of the limitation is going to be how far they can be from different facilities. So, you still have to be 1,000 feet from the school. A center cannot be located with 500 feet.

Linda Simmons – Churches, daycare centers.

Eric Evans – Any private or public schools, churches, daycare centers. So, that is going to be part of it. The other part is, remember, these service centers are allowed in C-1 zones. So, I didn't map out C-1 zones for you. We don't have a lot of commercially-zoned lands in Malheur County and they are pretty congregated to certain areas. There's not a huge amount of possibilities to put this, once we pull EFU and ERU out of there.

Kathy Clarich – And all the parking is going to be off the street, is that not right? Because #8

says “entrances and off-street parking areas shall be well lit”.

Linda Simmons – These are two different things you are looking at. This is the proposal.

Kathy Clarich – This is what the ordinance says that we’re approving. Right?

Robert Quick – That’s right. One is the ordinance that we have to approve.

Eric Evans – I would have to see in our C-1 zone what it requires, if it requires off-street parking or not. Honestly, I don’t recall. I don’t work with the C-1 zones often.

Kathy Clarich – Well, I was just thinking that if it was required, off-street it would be better, because some of these places... If it comes, people park all over.

Eric Evans – That’s not specifically in this. I mean if that... and Stephanie, is she there?

Kathy Clarich – I just wonder because it did say “entrances and off-street parking areas”. This is for the service centers. I think you’ve done a very good job though of trying to cover as much stuff as you could cover. I mean, there will always be something that will pop-up somewhere, I guess.

Eric Evans – Don’t give me any credit for it. The credit all goes to Stephanie.

Chad Gerulf – So is the finished product, the actual shrooms, or is it just the chemical portion that you give them.

Eric Evans – So if you look at the manufacturing portion of it, it could be... I don’t know enough about it, to be honest. In our conversation with other planning directors, none of us really know what this entails and what it looks like, how do you administer that? That’s going to be up to the facilitators, right? So, these facilitators will take like a few hours... was it like 10 hours or something like that? 8 hours or something like that... And they can now facilitate... administer the product. So, it’s really up to them, what that product is. If they’re concentrating it in some kind of an oil. I don’t know. If they’re just popping some mushrooms in someone’s salad?

Linda Simmons – It’s not what this is. That’s not what this is. It’s not fun to make fun of it because it’s something...

Eric Evans – No, the fact is I don’t know how they facilitate it. That’s what I am saying. I don’t know if they just eat those mushrooms, if there is an oil that they put under their tongue. I have no idea how it’s administered. But the manufacturing part of it, kind of encompasses it, however they want it to be administered.

Clark Forsyth – So, we’re going to have manufacturing and then places where people can go and use it?

Eric Evans – Right. The service centers is where they go, and it is facilitated, the facilitator administers it. Then the manufacturing it’s where it’s grown or processed.

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Robert Quick – That's what my initial question is about: is there a separation because are we talking...

Eric Evans – I think? Does it say on here it can or can't be?

Clark Forsyth – Can they take it home with them? Or does it have to be administered there on the property?

Eric Evans – The facilitators... that will be through rules of the facilitators. So, the TMP doesn't talk about it. There is a facilitator licensing through OHA as well. Our TMPs won't address any of that.

Robert Quick – My understanding is that they have not fully developed the answer to that question yet.

Clark Forsyth – Ok.

Eric Evans – Right, because OHA has not done all the rule making.

Robert Quick – They haven't done their part. I couldn't find it in my research as far as any definitive things. But as far as the use of the product, just for our own information – yes, they can be directly ingested; yes, they can be dried and put into compounds; yes, it can be added to other things. There is any number of ways. So, that can happen. That's from my undercover days of a cop.

Eric Evans – Do you guys have any more questions for me?

Kathy Clarich – I have a correction. On page 6, #13 and the third line up from the bottom: "mobile unit, be and breakfast".

Eric Evans – Oh, "bed and breakfast".

Robert Quick – You forgot the "d" on "bed and breakfast".

Eric Evans – So, I would open it up for anybody that is opposed.

Kathy Clarich – So, is anybody in favor of this action?

**Proponent Testimony**

**Terry Finnerty, 4485 Hwy 201, Ontario, OR 97914**

Terry Finnerty – I do have questions about it. If you approve it, where does it go from here? It's just a comment also... It was only two nights ago, that Nova, on the public television, did that special on it. There is a lot of beneficial uses, but I think the scientists involved with it, either admitted that it needed to have more testing. And, that, in some way, if I was sitting here, thinking, the State pushes things through a lot, from another political area of the state, it would be the Board to look at this and say what happened? Would be to sit on it, not approve whatever

which way you're voting, I am still confused about that. But I have to look at it and see what it says on the ballot, but to sit on it and see what happens in other parts of the state before they approve it here. I think, us sitting so close to Idaho and what we've already seen in the marijuana industry, it'd be who is to sit on things and see how things take place in other parts of the state before we can move forward on it here. I think there is a lot of beneficial to it. There are some environmental issues I would be concerned about. I know psilocybin, I remember growing up as kid in collage, our Botany professor talking about growing it on cow pies. You can manufacture that, but then what happens to the property? What's the risk involved with contaminating other properties, resale property? If you got spores of this, this thing evident on your property, those are a lot of issues that still need to be addressed. But I would like to hear more about. I don't know if the State is going to do that before they ramrod this thing through here, but I think you guys are the first guardians about to deal with this thing rationally. I'd just encourage you to think about that. I think there is a lot of beneficial use, but the book is way out on it.

Clark Forsyth – I don't think though this ordinance addresses this. That's already on the ballot whether or not it is approved or not. So, we're just trying to get in front of it. In case they win.

Eric Evans – We want to minimize any conflicts that we have with any other uses, right? That's the whole idea with Time Place and Manner, is to make sure we are minimizing conflict.

Kathy Clarich – Is there anybody else that would like to speak in favor of this ordinance?

Eric Evans – Anybody online?

Kathy Clarich – Nope. Ok, anybody against this ordinance? If not? Closed to the public.

### **No Opponent Testimony**

### **Closed to Public Testimony**

Kathy Clarich – The motions are, suggested motion is to make a recommendation to the County Court to adopt ordinance 230 as written; make a recommendation to County Court to deny the adoption of ordinance 230 as written. So, what do you guys think?

*Linda Simmons made a motion to recommend to County Court to approve Order 230 as written. Bob Quick seconded the motion which was unanimously approved by the Commissioners present.*

**Applicant:** Carol Trevino  
1657 Pennington Dr  
Ontario OR 97914

**Owner of Record:** Carol Hemphill  
1657 Pennington Dr  
Ontario OR 97914

***Consideration of a Conditional Use Permit for a non-farm dwelling in an exclusive farm use zone.***

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Kathy Clarich – Now is the time to hear the request for a conditional use permit for one non-farm dwelling in Exclusive Farm Use zone for applicant Carol Trevino. Planning department file 2022-08-014.

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.

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?

***John Faw and Kathy Clarich have visited the 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

MCC 6-3A-3 Allowance of Certain Uses

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 Manager, Tatiana Burgess.**

Tatiana Burgess – This is the Planning Department file 2022-08-014 for a Conditional Use Permit Application for one non-farm dwelling. The applicant is Carol Trevino at 1657 Pennington Dr, Ontario OR 97914. The owner of record is Carol Hemphill – it's just a matter of a name change, it's the same Carol. The proposed action is, like I said, for a non-farm dwelling on the property identified as Tax Lot# 1200 on Assessor's Map 17S47E10D. Malheur County Ref #6497. And the property is 3.01 acres and it is zoned Exclusive Farm Use. It is currently vacant land with no irrigation on it, there is no water rights on it. All the adjoining properties are employed in farm land and there are single family residences. And in addition, to the west there is a 6-parcel kind of subdivision. It wasn't called a subdivision at the time, but it is predominately a residential area in there. It does have direct access straight from Boat Landing Rd. We do have a letter attached regarding the access. A DEQ sanitation system would be required for this application. And the property is within Payette Rural Fire coverage. We do have a letter from them as well. Soils on the property are primarily class II and III. A bit about the zoning history: Carol has gone through this process before. She had requested for a Conditional Use Permit in 2006 which was, at the time approved. And then in 2010 she had requested an extension and she was granted it as well. However, she never built. In 2013 she came back in front of the Planning Commission and requested for a Conditional Use Permit, which again was granted and it was not executed, she didn't build. In addition, there was a small property line adjustment that was done in 2005. And at that time, it increased the size of her parcel to the current size of 3.01 acres. And that's all I have for now.

Kathy Clarich – Ok. Carol, would you like to step up and state your name and address for the record?

**Applicant Testimony**

**Carol Trevino, 1657 Pennington Dr Ontario, OR 97914**

Kathy Clarich – So what are you plans now to do?

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Carol Trevino – Well it is the same plan that I had before, just never was able to do it. And I had an opportunity to do something, but I didn't have the conditional use in place. So, I better get it back active again. I think on that, but I don't know about now. But that way I would have it. If I can make it work.

Kathy Clarich – So you're planning on maybe a double-wide manufactured home or something?

Carol Trevino – Well that was what I was thinking. Yeah, there was one I wanted to get. Since I didn't have the conditional use, I'm sure it's gone by now. Or a small house. I am not planning on building a mansion out there.

Kathy Clarich – Anybody have any questions for her?

John Faw – Why will this work now and it hasn't?

Carol Trevino – I don't know that it will now. I'm just... If I am able to do it, I will. I just didn't have the, where with all, I guess... I don't know just some different things happened. I wish I would have done it sooner. It would have been less complicated. Way less complicated and not as expensive as it is now.

Clark Forsyth – I think it is straight forward.

Kathy Clarich – Yeah. Do you want to take your seat? Is there anybody here that is for this action, a proponent of this action? Anybody online that's for this action? Anybody against this action, opposed to it? If not, I will close it to the public.

**No Proponent Testimony**

**No Opponent Testimony**

**Closed to public.**

Kathy Clarich – What do you guys think?

John Faw – Why not? It's been approved before. How many times can they come up? Is there a limit on how many times you can go through the process?

Eric Evans – No.

Kathy Clarich – Not as long as you keep paying.

Carol Trevino – It would be nice if you just got it once and didn't have to worry about it expiring, in my opinion.

Kathy Clarich – I need a motion for a Conditional Use approval for one non-farm dwelling.

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

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

**Applicant:** Weston Wettstein  
141 SW 3<sup>rd</sup> St  
Ontario OR 97914

**Owner of Record:** Weston Wettstein  
141 SW 3<sup>rd</sup> St  
Ontario OR 97914

***Consideration of a Conditional Use Permit for a non-farm dwelling in an exclusive farm use zone.***

Kathy Clarich – Now is the time to hear the request for a conditional use permit for one non-farm dwelling in Exclusive Farm Use zone for applicant Weston Wettstein. Planning Department File 2022-09-009.

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

1. Do any members of the County Planning Commission need to abstain?  
If so, state the reason.
2. Do any members of the County Planning Commission have any conflicts to disclose?  
If so, state the conflict.
3. Do any members of the County Planning Commission have any bias to disclose?  
If so, state bias.
4. Do any members of the County Planning Commission have any ex parte communications, including any site visits, to disclose?  
***John Faw visited the site.***
5. Does anyone object to any of the members of the Malheur County Planning Commission hearing this application?
6. Does anyone challenge the County Planning Commission's jurisdiction to hear these matters?

Eric Even – I am going to go ahead and start though, for Tatiana. I did receive a text message from the applicant tonight. That he says: “*I'm at my dad's and can't make the meeting. If anybody asks, the property is the same today as the last time I got the permit. And those test holes I dug are still the same. Thanks. My dad's just having some issues. Thanks again*”. I guess I would leave it up to you guys, if you wanted to even hear this, continue it without the applicant? I'll leave it up to you guys. If you guys feel like you can make a decision without the applicant here to answer questions, then it's up to you guys.

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Linda Simmons – I didn't find any changes from the last time it was in here. Everything in here, it's the same.

Eric Even – Right. I guess we can use that as his testimony too. It is short, but...

Kathy Clarich – But I did have some questions on the road and that sort of stuff?

John Faw – I was wondering if the Fire and Ambulance was going to make him improve that road or if there's access from the backside.

Tatiana Burgess – The Fire Department did submit a letter with indications of what they wanted the road to look like. But it wasn't actual... They didn't go out and view it. They did have an aerial view. So, we did put that as a condition.

Kathy Clarich – Because they said they could go with a 12-feet road instead of a 26. And it needs to have a wider road there, if you go look at it.

Tatiana Burgess – So, do you want me to do the staff report before you do a discussion?

Eric Evans – Depends on what... That's why I wanted to interject first.

Kathy Clarich – Do we want to have him here to talk to us?

John Faw – I would say the road is the only issue.

Kathy Clarich – The road is the issue.

Clark Forsyth – If we decide to approve it, could we approve it with those conditions?

Robert Quick – We already did, in the staff report.

Chat Gerulf – It is International Fire Code, that's all it is.

Eric Evans – Yes. The International Fire Code addresses width, addresses the grade and everything.

Clark Forsyth – I don't see any reason to postponing this off. It is all pretty much the same.

Kathy Clarich – Ok, Tatiana, go for it.

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

Tatiana Burgess – Ok. Planning Department file #2022-09-009 – Conditional Use Permit for a non-farm dwelling. The applicant and owner of record is Weston Wettstein at 141 SW 3<sup>rd</sup> Street in Ontario. This is Tax Lot 400 on Assessor's Map 18S46E10, Malheur County Ref. #6667. It is 28.15 acres on Exclusive Farm Use ground. It is currently vacant and not irrigated. The access is off of Foothill Dr and a DEQ sanitation system would be required. As I mentioned, there was a letter submitted by the Ontario Fire Chief, regarding the fire protection aspect of it. The soils

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type on the property, are a majority of them class VIII. There is a very small portion there of soils of class I and III. As mentioned, this was previously approved for a Conditional Use Permit back in 2007, and just the same as in Carol's case – it was never executed so the permit had expired.

Kathy Clarich – So, in the original one, were they going to use that road? Or wasn't there a different road?

Tatiana Burgess – I believe it was the exact same one. Private access off of Foothill.

Eric Even – Originally, when they first applied... At least when I went up and did the test holes originally, I didn't go up that road. I don't think it existed. I think I had to come in from the tube... The Siphon.

Tatiana Burgess – So, the 2007 Staff Report, for access, indicated "private access off of Foothill Dr". So, I'm assuming the same dirt road that is there today.

Eric Even – I just think it existed after you guys approved it.

Kathy Clarich – Well, that's what I was thinking, too. Because I think originally, they talked about going up the road by the Siphon, if I remember right.

Eric Evans – And I don't think they have legal access over there?

Kathy Clarich – No, because of BLM ground.

Tatiana Burgess – So, the original application for access stated, quote: "*Private access would be provided off of Foothill Dr, although no detailed access road was provided in the application*". So, that was the assumption that what is there today happened after that permit in 2007. It is on the map behind you guys, too.

Kathy Clarich – I do see the thing from the Fire Department. But this is where Tatiana and I discussed this. And to me, it was saying that they had some exception where it could only be a 12-foot-wide with turn-outs every 400 feet. But the Fire Code says, anything over 500 feet has to be 26 feet wide. And where he didn't go out and visited, I am concerned it going 12 feet wide. I think we need to make it be 26-foot-wide, if we're gonna...

Tatiana Burgess – So in this case, as I was telling you, when we talked about it, if you obviously are familiar with the property and the Fire Chief did not go out, we can definitely edit that condition and make it to where the access road is built up to the standards of the International Fire Code. That way we don't have to make the condition out as how he wrote it, but as how you guys want it.

Eric Evans – I would feel more comfortable allowing an expert, like Terry, to actually do the final approval on that. And not us, dictate how he interprets his Fire Code. So, I would suggest that we can.... I don't know how it is written, how the condition is written... but, if we say: it's got to meet Fire Code and be approved by the Fire Chief...

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Clark Forsyth – With a site visit?

Kathy Clarich – With a site visit?

Eric Evans – Sure.

John Faw – If he approved it without a site visit?

Eric Evans – That's where my mind goes with that, too. I mean, it's really up to him to approve whether his apparatus can get out there. So, I am sure the heck not in a position to dictate to the Chief that he has to do anything.

Kathy Clarich – Yeah. I just... To me, this area is... a lot of people don't realize it that everything, even the canal on the hill is moving down the hill.

Eric Evans – Right.

John Faw – That is sandy up there and it's moving.

Kathy Clarich – Yeah, it's moving and I even had a geologist out there for another thing that we did, and he already told us how much it's moved. I can't remember exactly. But it does concern me about when they put this road in... I can't remember who it was, but they had boulders rolling down onto Foothill Dr when they put that road in.

Eric Evans – I want to say it hit a car.

Kathy Clarich – It did hit a car, it did hit a vehicle. So, it does concern me also about all-weather and that curve at the top.

Tatiana Burgess – How they have it?

Kathy Clarich – So, I guess if he wants to do that, then more power to him, I guess.

Tatiana Burgess – Do you want to ask for testimony?

Kathy Clarich – Yep. Anyone have any more question for Tatiana? Ok. If not, public testimony. Anybody in favor of this action? Anybody online in favor of the action? Anybody opposed to this? If not, I will close it to public testimony.

**No Proponent Testimony**

**No Opponent Testimony**

**Closed to public.**

Kathy Clarich – Do you want to fill us in on what your conditions of approval are?

Tatiana Burgess – So, from what I saw in the previous approval, that statement that we usually

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prescribe to have it entered into the chain of title for a non-farm dwelling parcel, had not been entered. So, I have that in there. And then the standard that fire breaks shall be constructed and then regarding the access, I just had it indicated exactly how it was in Chief Leighton's letter. But... And of course, it's valid for 4 years. So, if you are wanting me to edit that condition regarding the access road, I can. Just let me know how you want me to edit it.

Kathy Clarich – Well, I think we should have it in there, it needs to follow the International Fire Code, basically. I think that's even what he said on here.

Eric Evans – And you want it to say with final approval from the Fire Chief or needs to follow the International Fire Code...

Tatiana Burgess – Subject to Fire Chief's final approval?

Eric Evans – Yeah, at the discretion of the Fire Chief.

Robert Quick – With final approval.

Eric Evans – With... subject to the Fire Chief's final approval, in writing to the County.

Kathy Clarich – So, now, that is the road he's planning on using, right?

Tatiana Burgess – According to the site plan he submitted, yes.

Kathy Clarich – Ok, so if he changes anything, then what happens?

Eric Even – Well, if he chooses to use different access... Well, I guess it would depend if that access is off of Foothill Drive and it meets Fire Code, what we just said, then he would be fine. Now if his access were, let's say, to go through a NEPA process to get access through BLM lands and put a driveway through BLM land, then I think we would come back and have you guys review that.

Kathy Clarich – Did I miss a thing from the Road Department?

Tatiana Burgess – There was nothing from the Road Department on this. We didn't get it in time.

Kathy Clarich – Did we ask them for anything?

Tatiana Burgess – Yes.

Kathy Clarich – So we don't know if they're ok with the line of sight or anything?

Tatiana Burgess – So we asked them to provide comment, but they didn't.

Eric Even – They didn't provide comment or they chose not to.

Kathy Clarich – So that could also be a condition that it's approved by the Road Department? The access?

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Eric Even – Sure.

Kathy Clarich – I think that would be good, because of the way it comes off of the hill side there.

Eric Even – When you guys frame your motion, you'll just want make sure you include both of those. And Tatiana will have the wording done probably by tonight. She probably will have all the orders ready.

Tatiana Burgess – I do have them ready.

Kath Clarich – Ok. So we need... Anything anybody else wants to put on the conditions? Well I put approval of the Road District, 'cause the don't have a letter from them, plus the International Fire Code thing. So, I need a motion for the staff report and findings of fact.

***Robert Quick made a motion to approve the staff report and findings of fact with the amendments that the property access meets the International Fire Code and the approval by the Fire Chief with written report to the County and the Road Department. Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present.***

***Linda Simmons made a motion to approve a conditional use for one non-farm dwelling. Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present.***

**Applicant:** Shale Ann Cluff  
311 Cardinal Rd  
Bishop CA 93514

**Owner of Record:** Shale Ann Cluff  
311 Cardinal Rd  
Bishop CA 93514

***Consideration of a Conditional Use Permit for a non-farm dwelling in an exclusive farm use zone.***

Kathy Clarich – Now is the time to hear the request for a conditional use permit for one non-farm dwelling in Exclusive Farm Use zone for applicant Shale Ann Cluff. Planning department file 2022-09-014.

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

1. Do any members of the County Planning Commission need to abstain?

If so, state the reason.

2. Do any members of the County Planning Commission have any conflicts to disclose?

If so, state the conflict.

3. Do any members of the County Planning Commission have any bias to disclose?

If so, state bias.

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

***John Faw – Site visit***

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

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

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

Tatiana Burgess – This is the Planning Department File #2022-09-014 – Conditional Use Permit for a non-farm dwelling. The applicant was Shale Ann Cluff at 311 Cardinal Rd in Bishop, CA 93514, and the owner of the record is Dale and Judith Rossi – 1402 Hillcrest Dr, in Vale, OR 97918. The property is identified as Tax Lot #300 on Assessor's Map 18S45E11, Malheur County Ref#13644. It is 5.75 acres on Exclusive Farm Use ground. It is currently vacant and non-irrigated. All the surrounding properties are employed in farm or range use. The access is via private easement off of Hillcrest Dr. A DEQ sanitation system would be required. The property is within Vale Fire Protection District, and we do have a letter from Vale Fire. There is no water rights and the soils on the property have not been surveyed or classified. On the zoning history, we indicated that there is none known, but however there is an action that was prior to the current zoning laws, that was identified how this parcel was created. So, in 1981 the Rossi family petitioned the Malheur Planning Commission at the time, to have a non-farm partition. So, through that process they've created this, it was split off of the current Rossi family property. When they did that, I just want add some things, because there were other things that our office received after the packets were sent to you guys. So, in 1981 when the property was partitioned, we are assuming that the access that was proposed was a private easement that was going across the Rossi property. And that is recorded in the original deed that was included in your packets. However, later on, there was another easement that was recorded in 2015, that goes across the adjacent Burkhardt property. So, there are two easements: one does not vacate the other, they are both valid and existing still. When we sent out the packets, after that, on October 24<sup>th</sup>, we received a letter from the Burkhardts, stating various reasons why they opposed. This application, they... I have sent those to you, I believe you guys had a chance to review it, it's exhibit 5. And then, at the same time we received a letter from Malheur County Road Department, commenting regarding access being off of Hillcrest Dr, and specifically, that it was a County-maintained road. And then today, just this afternoon, I did get rebuttal from the Rossi family, from Corey and Shale Ann. It was a letter responding to the letter of opposition that we got from the Burkhardts. And I believe they are online. I don't know if you want them to speak to the letter that was submitted? Or do you want me to read it into the record?

Kathy Clarich – I will let them do it.

Tatiana Burgess – Ok, that's all I have for now.

Kathy Clarich – Ok. Who's online now? Are they on the phone?

Robert Quick – Is the petitioner here?

Tatiana Burgess – So Shale Ann is online, it looks like. And then, Kim Bruce is their realtor. She's here.

Kathy Clarich – Ok, so which one wants to speak on this? Shale Ann?

Shale Ann Rossi – Yeah, I think Corey is on the conference call. Not video, just audio. I believe he is going to speak for us?

### **Applicant Testimony**

#### **Corey Rossi, PO Box 876852, Wasilla, AK 98687**

Kathy Clarich – So, tell us what you are planning on doing? And then you can talk about your letter that you sent today.

Corey Rossi – Ok, so essentially what we are trying to do is reestablish the Conditional Use Permit from 40-some years ago now. And of course, it expired back in that time. But we are trying to reestablish that. And we understand we have to have access, of course, to do that. As Tatiana had mentioned earlier, that we had an easement across the Rossi property to access that. If you have a map there of the parcel, to access across the east side of parcel #400 and across the ditch up into parcel #300... That's essentially what we had to begin with, in the early '80s. Subsequent to that, my sister and I, had both moved out of state and gone on, and raised families and kids, and grandkids in other parts of the country. And my dad, Dale Rossi, I sold the property back to him, and he decided to continue with the development there. And so, he secured an alternate easement for access to the property, primarily, because the original access came in so tight to the crest of the hill on Hillcrest Dr. As you are traveling east to west, past the, kind of the border of the Burkhardt and Rossi property, you come over a rise right there. If someone was trying to pull out in to Hillcrest, they would be completely blind-sighted. Very difficult to see anything coming there or see anything pulling out. And so, he pursued an alternative access and got an easement from Marie Hargrave. That's the one that apparently is in some dispute now. So, I did read the letter of opposition. I didn't see much in that, that was in my estimation very representative of what was actually the case. And I think perhaps a lot of this maybe a misunderstanding of where the easement actually is. And so, I included maps in my response letter for everyone to review to show where the easement actually occurs, from a satellite photo, to kind of see it, rather than just trying to look at the hand-drawn map or the legal language of the easement itself. But, in any case, there was, I think the confusion, comes in that the easement, with hand-drawn, it has dimension in it, but nothing to scale. And so, then the easement was drawn up by the law offices of Butler and Looney. So, then they went and had the legal language put in to describe actually where that easement actually is. So, I had a surveyor come out and show me as well, exactly where it is, because it was a little bit difficult for me to discern without some help on the legal ease there. So, in any case, that's where we're at. A lot of the contention in the letter of opposition, are describing something that's not actually occurring. And again, I am not accusing anybody of being dishonest. I just think it's a misunderstanding. So, as you can see... Does everybody have a copy of our letter, of my response letter or no?

Kathy Clarich – Yes

Corey Rossi – Dated October 27<sup>th</sup>.

Christine Mosier-Crysler – We do not have a copy of it. We do not have a copy of the letter or of the maps that Mr. Rossi is alluding to. My name is Cristine Mosier-Chrysler and I am representing the Burkhardts.

Kathy Clarich – We'll be ready for you in a little bit. It's still his turn to finish talking.

Corey Rossi – Ok, do the Board members have a copy of it?

Kathy Clarich – Yes.

Corey Rossi – Ok, so I think some of the issues that were described in the letter of opposition... There was a lot of discussion about interference with cattle operations and consuming cattle grazing (INAUDIBLE) and so forth, or making it unavailable to cattle so on. But, if you look at the map, it is a satellite photo that is in figure 3. I think it's the last thing in the response letter that I've written. You'll see where the driveway that services the Burkhardt property at the top of the photo, leaves Hillcrest and crosses the Owyhee ditch, which is represented in the dotted lines. You'll see that, that is kind of an open area right there and always has been. To the right of it or to the east of it, is a hay field, that I believe now it is fenced. It wasn't historically fenced, but I believe it is fenced now. But the idea was to utilize that corridor which was already being used as a driveway and an access and has been historically, for at least 50 years that I am aware of, and I'm sure for quite some time before that. But that was a historic access from Hillcrest up to the ditch. And so, it traveled through what was traditionally and I believe still is, somewhat of an implement yard, you know, farming implement. Richard Smith had a big haystack for years, things of that nature. It resided essentially up against on the far west part of the Burkhardt property, kind of against the Rossi fence there. So, there always has been an open corridor from Hillcrest up to the ditch and now beyond on up to the property, that Haines family built, that now the Burkhardts own. There is, in fact, a fence that is a bit of an entrance gate to that, as you cross the ditch. There is a bit of an entrance gate there into that upper parcel, which I think, of the Burkhardts', which I think is being referenced in some of their discussions. But you can see the easement never reaches that fence line. It comes up from Hillcrest, unimpeded, up and across the ditch and it immediately banks to the left along the ditch and back into the Rossi property. So again, I think maybe that's where some of the misunderstanding was, that there was some thought that somehow the easement was going to continue further north before it cut across or something of that nature maybe. But there'd be no reason for the easement to inhibit cattle movement, cattle feed, you know, leaving gates open and closed. The only gate involved in the whole operation in, for the easement's concern, is when you leave Burkhardts' property heading west, a little bit more north-west I guess, along the ditch. There was a gate that separates the Rossi property from the Burkhardt property there, and of course, that gate will have to be monitored like any gate between two adjacent property owners. That again, I don't know what the thought was as I was reading through the opposition letter. That's essentially what it sounds like the rub was. Other discussions about you know, whether or not we're going to harm somebody else's property by having a well on ours... I don't really know. So, I responded to that the best I could. The historical fact is, that our well was put-in first, nor we have ever contended... You know in fact, when Harry Shaffer punched that well for me, Richard Smith – he was a close friend of ours and the owner of the property to the east at that time, was

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monitoring that very closely, because he was wanting to know if there was water there. He was pretty pleased with the fact that we got water. And five days later, when Harry was done with mine, he moved him right over onto his property and had him punch a well for him, as well. So, we never really had any kind of a rub with the neighbors over water or any contention about how tall their grass was or wasn't, or how it might affect us with fires and so on. So, I am just going to leave that part out. I have spoken to that the best I can, in print. But again, we're not looking for any trouble with anybody. We just want to have a safe and distinct easement to get us to and from the property. And put us in position where we can comply with the need for having an easement to get our conditional use permit for the upper piece.

Kathy Clarich – Ok, thank you. Does anybody have any questions?

Eric Evans – Just real-quick, for Chris that's representing the Burkhardts, if you have access to our website, that letter has been uploaded to our website, if that helps.

Chris Mosier-Crysler – We're looking for it. We're on the website now.

Eric Evans – You're going to have to refresh it. I just updated the website a few seconds ago.

Chris Mosier-Crysler – It just came up. Because we haven't had a chance to look at that, it's kind of hard for us to speak to what Mr. Rossi sent in. And we couldn't really follow along with the maps since we didn't have that until just now. So, we have some things we'd like to speak to. But, I don't want to jump in too soon. So, you let me know when you are ready to hear from me, from us.

Eric Evans – And also one other thing. I also emailed that to Teresa too.

Teresa Ballard – Thank you!

Kathy Clarich – So, can you like, show us the lower part of this, down to the road?

Eric Evans – Yes. So more like that?

Kathy Clarich – Yeah.

Tatiana Burgess – So, the original Rossi property was all of it.

Kathy Clarich – The original was up here, right? That was the original?

Tatiana Burgess – The original easement. Yes. Was across there.

Kathy Clarich – Straight right up through there?

Tatiana Burgess – Right.

Kathy Clarich – OK, now they're saying that there was one from Hargraves that comes along this way?

Tatiana Burgess – Correct, that was recorded in 2015, that crosses the canal then goes over.

Kathy Clarich – Ok, so it does not go on the canal road though? They don't let you run on the canal road. So, it is another 25 feet off of that?

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Tatiana Burgess – The total length of the easement I believe was like 565 feet or something like that. I don't remember.

Kathy Clarich – Ok, are they aware of the International Fire Code?

Tatiana Burgess – They did get the letter from the Fire Chief. They actually submitted it with the application. Yes.

Kathy Clarich – OK, just making sure. Ok. Anybody else have any questions for Mr. Rossi?

Clark Forsyth – Are they going to access here or up to here?

Tatiana Burgess – It goes up to the property.

Kathy Clarich – Where it crosses that bridge, it has to go across.

Kim Bruce – It has to go across the Burkhardts property onto the Rossi property, and then up.

Kathy Clarich – Because it says adjacent to the canal.

Eric Evans – And if you'd like, I can pull up any of those maps that you have in those letters, as well.

Clark Forsyth – It makes sense.

Eric Even – I am going to pull up that one with that red mark on it, just in case Teresa would like to see that.

Kathy Clarich – Too bad you can't just overlay it.

Eric Evans – You might be able to. I'm just...

Kathy Clarich – Ok, since nobody has any questions for him right now. I am going to open it to public testimony. I am going to ask for anybody that is in favor of this action? Anybody online that's in favor of it? Ok so, is there anybody that's opposed to it?

### **No Proponent Testimony**

### **Opponent Testimony**

#### **Christine Mosier-Crysler, attorney representing the Burkhardts – 280 A Street Vale, OR 97918**

Christine Mosier-Crysler – I am the attorney representing the Burkhardts. With me is Megan Burkhardt, who is the person who actually lives... is the renter, with her husband and the daughter-in-law of the Burkhardts. They rent that property that is up at the top of the hill. That is where they live. So, my address is 280 A St Vale, OR 97918. The younger Burkardts are at 1362 Hillcrest. Jeff and Diana Burkardt are at 1404 Hillcrest. Those two properties, basically horseshoe around the property that we're talking about. So, if we could... I know you had the map up that had the orange or red line, I think from Mr. Rossi. If you could bring that up. I think we can better explain some of the problems that we're having with that area of the easement and how that would impede the current cattle operations that are running on the Burkhardt property. The Burkhardt property, that line that runs more east-west after they cross the culvert there,

having to go off of that, 25 feet off of that ditch road, runs squarely through a pumped water-trough, that the Burkhardts use for their cattle operations, when they're running cattle on this property. The property just to the south-east of that north west line, they run cattle there and then they will run cattle through the gate and the culvert up to that property, that borders this Tax Lot #300. The road that you see there running up to the top of the hill there, that is a driveway, it is a gravel driveway that's approximately 15 to 25 feet wide. So, it's a single car width driveway. It runs over the culvert, which is again only about 20 feet wide. Because that easement I believe we were told, it was over 500 feet, it's going to have to be improved and increased in order to meet that requirement to the, I believe, 25 feet in width.

We do have some things in the staff report we do not agree with. Page 2, paragraph E, it states that the proposed dwelling will have no negative effect on the farming/ranching practices that will interfere with the stability with the community's social and economic characteristics. We don't agree with that, because of the current use of the agricultural property that the Burkhardts own, that is used for grazing cattle. It would cause them to have to significantly move that piped water-trough north of that easement. It would cause them to have to maintain gates at both Hillcrest and two gates to the right or to east of that easement along the canal bank, and then another gate that Mr. Rossi alluded to, that is on the western side of that easement along the ditch bank. So, that would create quite a bit of cost for anyone who had to do it and interrupt the way that they are using that agricultural land. I was just trying to look at the staff report. If you look on page 4, number 1, A1 – proposed finding: the granting of this application will not result in loss of natural resources. One thing to keep in mind is, that the Burkhardt farm, which is on the western side of the Rossi property, that has two wells. The water table there when they are watering their cattle, they cannot run water at the same time to the landscape. There just isn't enough there. Now, I realize that is a well drilled in 1981 that then didn't go to use for this lot, but the property has been in use agriculturally by the Burkhardts for two generations. And since then, the water table, I don't know if it has gone down or not, but it is an issue and it's concerning. Also, within the last year, there has been range fire that threatened this property. It came right up to it. They had to quickly cut a firebreak to save the house that is higher up on the hill, the rental that the younger Burkhardts lived in. So, it is a concern. So, the Burkhardts do object to this building site. They do feel that it will impede their current use with their cattle grazing operation. And their concerned about the possibility that there just might not be enough water to keep that property green enough to avoid future wildfires.

Kathy Clarich – Ok, thank you.

Christian Mosier- Crystler – Thank you.

Kathy Clarich – So is there any other, anyone else that is against this action?

Kim Bruce – I would like to correct some things that were said.

Eric Evans – She is not against it though.

Kim Bruce – I'm not against it.

Kathy Clarich – You're neither way?

Kim Bruce – No. I am actually just wanting to speak about it.

Eric Evans – How about, you'll represent the applicant in the rebuttal, how's that?

Kim Bruce – Ok.

Kathy Clarich – She's neither for or against?

Eric Evans – She represents the applicant.

Kathy Clarich – Ok. Is there anybody else opposition of this? Ok, so you want to do the rebuttal, then?

### **Applicant's Rebuttal**

#### **Kim Bruce – Goldwings Realestate Group, 735 NW 16<sup>th</sup> Street, Fruitland, ID.**

Kim Bruce – I am the real estate agent that represents the Rossis. And I would like to... I have a copy of the deed when the Burkhardts bought the property. It is actually, I'm assuming it was on their title of commitment, that this easement was there when they bought it. And so, what they have placed on the easement, would be placed on the easement after knowing that they have the easement. It's actually on the deed itself, that the easement was there, when they bought the property. And so, putting water tanks and stuff like that, across the easement and a fence, if they put the fence across the easement, would have been in their error, because they were highly aware. And I do have the deed, if you guys want copies of it and the easement is highlighted. So, that would be their error, if they put items on the easement that they knew was there when they bought the property. That's one of the main things that I feel should be pointed out.

Kathy Clarich – Ok, thank you! Corey? You get a chance to rebut.

Corey Rossi – Yes, I would like to. And again, not to be argumentative here, but you can look plainly at the satellite image. You can see the water trough in the image. That water trough's been there for years. Nobody is contesting that water trough. The easement doesn't even reach the water trough. Remember now, the part that is highlighted in red, that is the driveway that the Burkhardts use every day to get to and from the house. It is the driveway that the Hargraves used before the Burkhardts and the Haines before the Hargraves and Richard Smith before all of them. There is no water trough in the middle of that easement. It is some 50 to 75 feet or so to the north. It's fenced off from the easement. I think it would do people good to actually go and look at it with their own eyes. I would be happy to provide photographic evidence that what is being claimed is simply not true. It's demonstratively false. I was just there a month ago... about two months ago now. I was there for weeks and I grew up there. Is just, in fact, the easement that we are proposing is the exact same that Richard Smith used after they put the thing in to get to the upper property. And in fact, the easement as if follows the ditch bank to the left, is exactly what Harry Shaffer used when he got up in there with the well driller. That was the only way across the canal, across that same easement or across that ditch crossing. But this isn't going to interfere with cattle operations, with grazing... It simply isn't so. If you look at the map, the satellite photograph, there is no gate at Hillcrest Drive, nor has there ever been, other than maybe somebody temporarily putting up panel or something, to guide cattle somewhere if they're driving. I am not counting that. I am talking about permanent fence and a gate. There is no gate there and there hasn't been for decades. And the same with, if you follow that easement all the way up, until it crosses the canal and shortly after it crosses the canal, there is a fence line you can see coming in from our east fence, comes in, parallels the canal going from north-west to south-east kind of in that direction until it hits the driveway. There is a gate right there. That is the only gate between Hillcrest Dr and the stock tank that they're talking about. And clearly, they

can go open and close that gate anytime they please. The easement isn't any part of that. It stops short of it. That's why I just don't understand where the rub is. There is no crop in that. I can testify to that, there is no crop in that section, where you see clearly that there is alfalfa hay on the right and our fence line to the left. The easement, and the driveway goes up through that. There has been no crop in that area for 50 years that I know of. That's an implement yard. And this business of interfering with grazing and cattle operations and all this... I mean, I know it makes a better story, but it simply has no basis in fact. It just doesn't. And anybody could go out there at anytime and look at it. And again, I bear witness to the fact that it's been in that same condition, although maybe different implements and different wood piles, and different hay stacks. But again, there's never been a crop growing and there's never been an irrigation in that area. It's a driveway. It always has been. So again, I don't want to be fussy or argumentative. But, I mean, if people have legitimate claims, I want to, for sure, want to hear them. I have discussed all this at great lengths with Mr. Burkhardt as we were going through with all this. We talk all the time about all this stuff. I still don't really see what the rub is. And as for whether or not we can pump water out of the aquifer or not, I don't know if that's for this body to decide nor is it for my neighbors to decide. Like I said, we never opposed anybody with any wells they did, even though ours preceded theirs. We welcomed our neighbors and tried to help them every chance we got. This is just so foreign to me. I don't even know how to respond to it. Pardon the frustration in my voice, but again, bring something valid and I'm going to listen with open ears, but this business of that being a grazing area... There is no grazing at all. It's a dirt road and it is the very road they use to get to their property daily. And there's no gate on it, not on the portion we want to use. Anyway, and again I am just going to let it rest at that. I don't mean to get so riled-up, but this just doesn't have any basis in fact at all. These particular claims. And as far as green belt and grass... Here on one end, there isn't enough water to keep their household going, and then "but I don't have enough to keep a green belt to keep the whole country from burning up". What is that? I don't even know how to respond to that. All we are talking about is being able to put a house on our own property. We've been permitted in the past to do so, having gone through the process. In fact, the property was separated from the original property for that expressed purpose. It is in the record. The easement that we have now across the Burkhardt property, again, was secured for that specific purpose. Marie Hargrave and Dale Rossi went in and that was Cliff Looney themselves together, to discuss this and wanted to get an easement across that place. So, that's how this all came about. The expressed purpose of providing access, a safer access to the upper piece. Because if you look where that road comes into Hillcrest, that truly is a crest in the hill right there, and you, kind of, are at the peak of it, where you can see both ways a little more. If you drop down to the west, you're dropping into a big hole, where those trees are and it is a blind spot. It's a very dangerous spot to get in and out of. I guess that's about all I can say about it. I really don't want to entertain anything more. I could get into a little more detail. We could get a satellite view and see the water in the tank, and you'd know exactly where it's at. But, there's no easement going through that water tank. In fact, it is south of the fence, that fences off the water tank.

Kathy Clarich – Ok, thank you.

Corey Rossi – Thank you.

Kathy Clarich – Ok. Let's close it to the public.

**Closed to the public**

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Kathy Clarich – Ok. I have questions. They know that the Fire Code is 26-foot for 500 feet or more, plus the turn-outs?

Tatiana Burgess – They were the ones that presented the letter along with the application. They turned in that letter to us along with the application.

Kath Clarich – So they know that they don't have easements for the turnouts.

Kim Bruce – How is that, when easements are done... When the Fire Department does one thing and the Fire Codes change... Because the Burkhardts don't have an easement for a fire truck either.

Tatiana Burgess – So, that easement is for the benefit of the two tax lots. Not the third tax lot that the Burkhardts are using for that house, to make that clear. So, when they were using it for a driveway to access their house, that's between them.

Eric Evans – The Burkhardts home, they own the property anyways.

Tatiana Burgess – They own both of them, yes. But also, the fact that it's not corresponding to the Fire Code, I don't know. That neither here nor there. The road maintenance agreement was included in that original easement as well. Because they were talking about entertaining it or not. So, that easement from 2015, that is included in the record as exhibit #2. If you look on the last page of it, the last paragraph of the easement itself, it does say that the grantees acknowledge and accept the full obligation of maintaining of the roadway. So, the maintenance of it was already included between the two parties.

Kathy Clarich – So, that roadway then becomes who ever ends up buying that lot, that they're trying to sell?

Tatiana Burgess – Correct

Kathy Clarich – It becomes their problem to maintain that easement?

Tatiana Burgess – Yes, it is a two-party agreement.

Eric Evans – I think it's the agreement.

Kathy Clarich – It just says grantees. It doesn't show.

Eric Evans – Right. Not the grantor, the grantees. So, the grantees would be who is benefiting from that easement. So, it would be Tax Lot #300, the Rossi's tax lot is who would have to maintain the driveway.

Kim Bruce – It is mutual.

Eric Evans – Or whatever it says.

Kathy Clarich – It doesn't say mutual.

Eric Evans – It says grantees acknowledge and accept full obligation of maintaining roadway for the east-west easement and sharing the cost of maintenance for the north-west easement. So, yes, everything that goes... Once it turns – it's the grantees and that north-south section – is both.

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Clark Forsyth – So this part is shared.

Robert Quick – That's right.

Chad Gerulf – And the easement itself, it's set in stone, right? I mean, it's non-negotiable. So, there is really no question as far as the water trough, if it is within the easement, then...

Tatiana Burgess – So, the easement is a civil agreement, between the two parties.

Chad Gerulf – But they can't just take it away, right?

Tatiana Burgess – If they were to amend it or revoke it, it has to be as agreed by both parties. Not one party can make a decision about it. And same for vacating it or whatever, it has to be a mutual agreement by the parties that were originally cited.

Chad Gerulf – So really the only conversation is going to be the maintenance portion, because...

John Faw – That's covered.

Chad Geruld – So, I mean, it should be good to go then, right?

John Faw – The only problem I see, is the width. Where it said 25 feet, where you've got possibility of three parcels using that, at 25 feet, that doesn't meet current standards. It probably did when... well this is 2015.

Kathy Clarich – 2015. International Fire Code was still in effect.

John Faw – Yeah, that hasn't changed since then.

Chad Gerulf – I know working with the Fire Department on road construction, they do... Not every single road is the same width. I mean, we call the chief and they say, you know, you can go ahead and do a 12-foot wide road. But we want a turnout every 300 feet. Do a 26-foot-wide road – you don't have to have any turnouts. Do 20-foot-wide road and you can have a turnout in 400 or 450.

Tatiana Burgess – That was partially on me, too, because I tried to get comment from Chief Tolman... But I tried to call his office today, I was thinking about that. I should have tried earlier. So, I couldn't get ahold of him. I called him this afternoon.

Clark Forsyth – But we're only talking about that portion of the road, right?

Tatiana Burgess – The north-south part.

Chad Gerulf – From Hillcrest to the canal?

Kathy Clarich – No, north-south.

Kim Bruce – It is a 25-foot easement.

Eric Evans – The entire thing, through to the Burkhardts is a 25-foot easement. That can be used for ingress and egress to Tax Lot 300.

John Faw – Lot 3 and 4 both doesn't? Is what I read.

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Eric Evans – Right.

Clark Forsyth – It looks like there's room there to widen it, if they need to. I didn't go site see it. I am just looking.

John Faw – You have to have them all agree to change it.

Chad Gerulf – Or get the blessing from the Fire Chief.

Kathy Clarich – Because it says right here, it has to be 26 feet wide.

John Faw – That kind of blows me away. We're in '15, because those codes haven't changed since then, have they?

Chad Gerulf – No.

Kathy Clarich – They've been that way in a long time.

John Faw – Well and Looney's office drew that up. That is not quite like them to make that kind of a blunder.

Robert Quick – So I see this at 26. Is that right?

Kathy Clarich – 26 for 500 feet.

Robert Quick – Ok.

Kathy Clarich – And there is also, if not, it's 25 feet now.

Robert Quick – It is 25 feet now.

Kathy Clarich – But there is also, I don't see it on this one... There're turnouts too with a turnaround at the end.

John Faw – I don't think you have to have turnouts on the road if it's just one, is it? You have to have turnouts if you go so far?

Chad Gerulf – Yes.

John Faw – Even on just a single?

Chad Gerulf – Yes.

John Faw – Because this one's got, what? 500 feet? Is what this easement is?

Tatiana Burgess – It is 500.

Kathy Clarich – This one is a little bit over 500 is it?

John Faw – 556 feet. So that's probably just outside of what you can get away with. What they'll let you get away with today anyway.

Clark Forsyth – Is this... did I understand that Corey just say, that this is pretty much implement lot. So, they probably got what, 50 feet, 100 feet to turn around in that?

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John Faw – I think there's room in there, but you don't have written permission to use it.

Kathy Clarich – Yeah.

John Faw – That's the issue.

Teresa Ballard – Kathy, this is Teresa. My question relates to that warranty deed dated 1981. Wouldn't that be the initial easement that was granted back in 1981? The regulations that would have been applied in 1981? Would those be the primary ones?

John Faw – Not when they re-did it in '15.

Teresa Ballard – Or do the later easement apply? The initial deed should be the one that is the one that applies. Is that correct? Or am I confused?

Tatiana Burgess – Teresa, I had our County Surveyor inspect both of these legal descriptions for both of these easements and he confirmed that one easement did not vacate the other. So, they are both currently valid and standing. One does not interfere with the other whatsoever.

Teresa Ballard – Well, that is what I was trying to say. And so, 2015 is not the issue. It's the 1981 that should be the deciding factor, is that correct?

Kathy Clarich – Not on the Fire Code though. When they're putting it in now, it has to meet the Fire Code.

Teresa Ballard – Ok.

John Faw – Is the one done in '81 and the one done in '15, are they exact?

Tatiana Burgess – No.

John Faw – I didn't think they were. I did not read them.

Tatiana Burgess – They are in different locations. So, the one done in '81, to clarify, when tax lot #300 was partitioned off, it went straight from Hillcrest. Yes. So, the Rossis granted an easement from them to them. That was '81.

John Faw – So, there's two separate ones. They're not that far apart, but there's two separate ones.

Tatiana Burgess – Correct. They're not.

John Faw – That's what I read. Because they're both in effect.

Tatiana Burgess – Correct. They're both still valid. It's just that the applicants were choosing, in their application, they indicated that they would rather use the one that's currently there and put in already. They already had the easement secured. Correct.

John Faw – And that's why they did that one in '15.

Tatiana Burgess – Yes.

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John Faw – For safety issues. Road District might not have approved an entry down where those trees are.

Kathy Clarich – That's right. Because you can't see right there.

Teresa Ballard – Kathy? With what Chad just said, that the Fire people will sometimes say, well it doesn't have to be 26, it needs to be 25... So, there seems to be some discretion left to the Fire Department. 25 feet and 26 feet are not very many inches more. Maybe we need to have that clarified by the Fire Department as to whether that's a suitable easement or not. Without the International Fire Code.

Kathy Clarich – Yes, that's what I was going by, what the city, the letter from them says, that if it's over 500 feet, it must be 26-foot width.

Teresa Ballard – But apparently, they have some leeway.

Tatiana Burgess – To what Teresa was saying... Like if the Chief is willing to allow the discretion maybe we can word that condition in a way that it would be, as currently prescribed or as otherwise approved by the Chief. Maybe? Or something along those lines?

Kathy Clarich – The only problem I see with doing that, is then the next person will come in and say, well, I have a 15-foot easement I want to put a road in. And you let these guys do it.

Clark Forsyth – Based on that information, that's why we all have brains. We look at each situation individually.

Kathy Clarich – That is reason to try and keep it all. So, that trucks can get in and out... you gotta be able to make a turn...

Clark Forsyth – I understand what you are saying. I get it, but 25 and 26 isn't...

Robert Quick – I can turn around a lot in 25 feet.

Linda Simmons – Can we finish this or does it need to be?..

Kathy Clarich – Yeah, I think... I don't see any reason why we can't finish it. You want to read the proposed conditions of approval?

Tatiana Burgess – So, currently what I had through my research again, through the deed research, that statement, that must be entered into the chain of title... I could not find it on there. So, that needs to be entered. The fire breaks need to be constructed to minimize the fire danger. I do have the road access, the specifications, as currently indicated in Chiefs' letter. So, I literally copied them exactly how it said. The road maintenance agreement – it's already in the current easement. So, I didn't notice that, it's probably redundant at this point. And then the approval would be valid for 4 years.

Kathy Clarich – Um, if it doesn't have this in the statement, has it already been taking off?

Tatiana Burgess – It has already been disqualified. Yes. Just for some reason... I don't know if this was something that wasn't done in back in '81. Maybe it was different back then...

Kathy Clarich – I was thinking they've been doing it for a long time.

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Tatiana Burgess – I couldn't find that language in the chain of title currently. So, that is why I added it in there.

Kathy Clarich – OK.

Chad Gerulf – On the easement, not to beat a dead horse. So, the Fire Code can, where you have two people on, using the one portion. Can the Fire Code apply to one party, but not the other? Like, can it apply to Burkhardts, and it's ok for the road that they use to satisfy the Fire Department, but it doesn't satisfy the Fire Department for the other party to use it?

Tatiana Burgess – I don't think it was even ever considered about it applying to the current residence, because this easement was drawn to benefit tax lot #300, which belongs to the Rossis and the Burkhardts property, to the west. The easement is between those two parties only. Not to the third property that services that house. So, technically that house doesn't have access.

Chad Gerulf – There is no bearing on that part.

Tatiana Burgess – Right. So, I don't think that was ever revised. The access to that house, I don't think it was ever reviewed by the Fire Department.

Kathy Clarich – Ok. So, I need a motion for the staff report and findings of fact.

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

John Faw – Could we add to that the condition, to make sure that they could get access to it, because there's no sense in approving it, if the Fire Department won't go up a 25-foot road.

Robert Quick – She's included that, it's condition #3.

Kathy Clarich – That's in here, they'd have to follow the Fire Code and if they state...

John Faw – That they're stuck with 26 feet, then...

Kathy Clarich – Unless the Fire Department says they'll do something different.

John Faw – Ok. That's not our call?

Kathy Clarich – That's not our call. It's theirs.

Robert Quick – Ok.

Tatiana Burgess – So, to clarify, you guys do not want me to modify that condition? You want to leave it as is?

Kathy Clarich – Yes.

Eric Evans – What are you guys proposing? How we're dealing with this? So, are you guys saying that they need to obtain an extra foot on their easement? Ok, so if we put this as a condition, we're going to require that 26-foot wide road.

Clark Forsyth – No, what we are saying, if the Fire Department okays it, then they're good to go.

Eric Evans – Ok. So, you are proposing that we change the condition to say “subject to Fire Chief’s approval”.

Chad Gerulf – Yeah, we’re going to have to.

Clark Forsyth – Correct.

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

**Applicant:** Mike Eicher  
672 NW 14<sup>th</sup> St  
Ontario OR 97914

**Owner of Record:** Matthew Eicher  
710 E McConnell Ave  
Parma ID 83660

***Consideration of a Conditional Use Permit for a home business in an exclusive farm use zone.***

Kathy Clarich – Now is the time to hear the request for a conditional use permit for a home business for the purpose of storing fireworks magazines, in an Exclusive Farm Use zone, planning department file 2022-09-010, for applicant Mike Eicher.

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.
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?  
***John Faw – Site visit.***
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 6-6-8-6 (C)      Specific Conditional Use Criteria for Home Business

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 – Tonight, we have before you, the proposed action is a conditional use, as Kathy has stated, for a home business for Homeland Fireworks Inc. The property is identified as Tax Lot #1200, Township 20S, Range 45E, Section 12 Assessor's Map #20S45E, Malheur County Ref# 9959. The planning action number tonight is 2022-09-010. This is a split zone piece of property, both Exclusive Farm Use and Exclusive Range Use, C-A1 and C-A2. The parcel is just shy of 142 acres. It's currently being used as farm land and has a home site. And a large, if not majority of the property, doesn't have any water rights. Adjacent properties are employed in farm use and range use, so, farming and ranching. It is accessed off of Cow Hollow Rd and exhibit #2 is a letter from the Nyssa Road Assessment District #2. There is no sanitation requirement. They are

not asking for any restrooms or anything out there. This parcel is located within the Nyssa Rural Protection District. There's no... Part of this property is actually within the special flood hazard area, but nothing... No part of it, it's more the southern portion, closer to...

John Faw – Cow Hollow Creek.

Eric Evans – Cow Hollow Creek, right. Thank you. I couldn't remember if it was Cow Hollow Creek. The soil types on the property: they have a wide variety, some class II, III, VI, and VIII. The location of the proposed magazine, is a class VI soil. The existing dwelling was built in 1938. The home was remodeled in 2005. And I couldn't find any other zoning history. Now, with the business itself, although it's not really the zoning history of this property, there's kind of some history of how we've gotten where we're at today. Back many years ago, we did a planning action for home. They didn't actually have home businesses back then, they were called Home Occupations. And they had certain stipulations with that. They allowed them up to, I believe, 3 magazines. And this was off of Heid's property out of Willowcreek area, between Jamieson... Now anyways, regardless, William D. and Rochelle Heid. So, I believe it was maybe a son-in-law and daughter or son... one of their siblings decided they were going to have this. It started off as an explosive business and then it turned into fireworks as well, or maybe I am backwards. Maybe it was fireworks, then explosives. They kind of grew. They went from a home business or home occupation, excuse me, to a variance that was granted to them, to allow them to grow even a little bit bigger. Then at a point in time, they grew to a size, where the ex-planning director felt like they needed to go to a next step. So, they petitioned Malheur County Court and the Planning Commission. They created an overlay zone. It's like a limited use overlay zone, that allowed us to do a conditional use permit with certain specifications. So, we actually have this limited use overlay zone still in our Code, still as a tool to grow. And at that point in time, they allowed 7 magazines. These magazines, since then, we have adopted Code that allows for a home business. And so, with a home business, it allows for up to 2,500 feet of a building can be built and be constructed. So that wasn't allowed back when we went through these other processes. The other process was a huge process. It was a process that I believe their attorney devised and came to the County and Jon Beal thought it was a great idea. He liked these overlay zones, supposedly. And so, we put that process through. I don't feel like that's a necessary process tonight, because of how our zoning ordinance has changed. And it does allow up to 2,500-square-foot of additional space to be used for this home business. And so, 7 times 320 is 2,240. So, we are shy of that maximum 2,500 square feet. And so, now it's going to take this same business from the Jamieson area and move it to, right off of Cow Hollow Rd, out of Nyssa. Any questions for me?

Kathy Clarich – So, ok, they're 40-foot containers and he is still going to move those? Or is he going to put a building?

Eric Evans – No, they're moving the 40-foot containers. So those are my 2,500-square-foot, the 7 containers. And so, there's a picture of them. They're 7 Conex boxes that are placed together.

Clark Forsyth – It's not like one building.

Eric Evans – No, but...

Kathy Clarich – You had me confused. I thought maybe they were putting up a building?

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Eric Evans – No. My point is, that they're allowed up to a certain amount. And it was my opinion that they stayed under that 2,500-square-foot.

Kathy Clarich – But they still have to go through the other?

Eric Evans – This is the only process.

Kathy Clarich – The Bureau of Tabaco Fire Arms and Explosive?

Eric Evans – The Bureau of Tabaco Fire Arms and Explosives. Yep.

Clark Forsyth – It sounds like the business is already existing. They're just moving their storage.

Kathy Clarich – But when they move their storage, don't they have to go through it again?

Eric Evans – Yes, they still have to make sure their licensing and permitting is up to date through them, which requires, if I remember right, it requires a Land Use Combability Statement from me, through the Bureau.

Kathy Clarich – So, you're telling us this is an already approved usage?

Eric Evans – Well it was approved on a whole different parcel, right? As part of their application you can read in there. So, being out in the rural kind of discrete location, is kind of part of the security plan for these explosives. So, it makes sense. I don't want this right next to my house necessarily.

Kathy Clarich – That's what I was going to say. It's not going to be right next to anyone's house. So, does he have a lot of people coming and buying from him?

Eric Evans – There is zero retail action. I believe in his application he states, and he can help me with this, it's like a couple of people. And then during the fireworks season, whatever those months are, it might go up to like 4 visits a week or what not. I can't remember what his application says.

Clark Forsyth – Yeah, it's minimal.

Robert Quick – But it's all staff though, right?

Eric Evans – It's only staff. There're no retail sales. As a matter of fact, I think that is a condition of approval, that there is zero retail sales allowed here. Am I making that up? Did I put that in as a condition?

Kathy Clarich – “Retail sales are not permitted”.

Eric Evans – Right, so this is all wholesale.

Kathy Clarich – And no testing or lighting of fireworks are permitted on this site.

Eric Evans – Which reminds me, I should also add, we also received a letter, which is exhibit #4. I appreciate you saying that and reminding me that I had this letter. And it is a letter of opposition from Curtis Sauret. Is he on? Do we see him? Let me double-check and see... So, if you guys would like, I can read that on the record? I can do that now or I can do it when you call...

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Tatiana Burgess – You guys had it as part of your packets.

Robert Quick – Yeah, we got it.

Clark Forsyth – I read it.

Eric Evans – So it is part of the record, so... where I was going with that, that condition I put in there as a response to answering his concerns about lighting those off and scaring cows. Because potentially there is an impact, but if we are not allowing them to test them or fire them out there, then that is a condition that we can apply.

Clark Forsyth – What he mentions in his letter too, that it was on...

Kathy Clarich – He was worried about traffic too. I think it was?

Eric Evans – Well it is well below the 400 trips a day...

Clark Forsyth – ... so it's during New Year's Eve.

Eric Evans – Right.

Clark Forsyth – It could have been the other neighbor, for the sake of the argument?

Eric Evans – Right. I don't have any problems as part of a condition of this CUP, that they can't light fireworks on that.

Clark Forsyth – I would agree, especially retail.

Kathy Clarich – And I am assuming they have to have fire breaks around it, just in case? Just wondered.

Eric Evans – You talk about the fire stuff, historically with that one over in Vale... One of the conditions was, that they had to pay annual dues to the Vale Rural Fire District. I guess you do that in Vale, right? And so, that was one of the conditions. I did reach out to the Fire Chief, for this one in particular, and they're actually a taxing district. So, everybody within that district already gets taxed, at whatever their taxing rate is, and therefore, they don't have annual dues that you pay into that district. So, I didn't put that, obviously, as a condition.

Kathy Clarich – OK. And this email that you gave us tonight, from Adele Schaffeld?

Eric Evans – Oh, Adele Schaffeld, our Building Official. So, that was, I guess for just information only. I reached out to her and asked if she wanted this as part of the record. It was kind of my information only. So, as of right now, the shipping containers, they're under a 6-month grace period to have them meet Building Codes. So, here coming up very soon, if you want to do some kind of a building or using a shipping as a structure, then you'll have to have Building Codes.

John Faw – So we don't have any right now in Oregon, or in Malheur?

Eric Evans – Any laws or any shipping containers being used?

John Faw – For like tiny homes, and...

Eric Evans – So we don't have any for tiny homes. Now we've had people propose some stuff like that, but they're also proposing that they cut out windows and stuff in there and that changes the structure of those shipping containers and therefore, they would've had to get those engineered for life and safety issues. So, those were never finished. I am not going to say we don't have any, because, come on, of course people probably live in shipping containers somewhere...

Kathy Clarich – Ok. Mike, do you want to add anything, that he hasn't already covered?

**Applicant Testimony**

**Mike Eicher, 672 NW 14<sup>th</sup> St, Ontario OR 97914**

Mike Eicher – I'm sorry about that. For some reason, my microphone is not working. Sure, I can add to that. We've been operating there out of Jamieson for quite a few years now and haven't had any problems. We just want to move the magazines. I am really glad to hear it's an easier process, than it was. That's great to hear. But yeah, we're just looking to continue business, just on a new location. I just wanted to address really quick the ATF approvals. I just had this past week, my magazines inspected by an ATF Agent. They come out every three years before they renew my Federal Explosives License and they inspect the magazines. And I asked them about the new site and they said the process is: I would notify them when I move the magazines and then they would come out and rely up on me to meet the standards, the necessary standards, when they come out and inspect next in three years, they would confirm that I've met those standards. That's the process for moving there. Did you want me to address the letter?

Kathy Clarich – If you'd like to.

Mike Eicher – Ok. So, just really quickly in there... We obviously won't be setting off fireworks next to a magazine. And the complaint there was setting off fireworks on New Year's Eve... I'm a fireworks display company. I do fireworks shows and that's why there's no retail sales at this site, because we're a display company. So, we either sell to a display or we sell the whole display and go produce that display. So, any fireworks that we've done there before have been properly permitted and insured and performed or done by a licensed firework technician. So, they're considerably safer than shows that people would go and get from Idaho or something like that. And again, we're insured, so, we do have some consideration when we're thinking about acceptable sites, and there were mentions about fire dangers of course. We're very conscientious about fire danger, because it's hard enough to get insurance without having to make a claim for that. So, there's that. I don't know what else. If anybody had any questions? Oh, I did hear firebreak mentioned. That falls under ATF regulations and the FBA regulations that we have to follow - 25 feet around the magazine has to be clear of brush and everything volatile has to be kept at least 50 feet from the magazine, so that's the firebreak regulation there. Thank you for the consideration.

Kathy Clarich – Ok, thank you. Ok, so, anybody have any questions for Mike? Ok, I am opening for public. Is there anybody that's in favor of this action?

Terry Finnerty – I have questions?

Kathy Clarich – Up to the stand. Are you in favor or against it?

Terry Finnerty – Neither

Eric Evans – Just state your name and ask your questions.

**No Proponent Testimony**

**No Opponent Testimony**

**Public Comment:**

**Terry Finnerty, 4485 Hwy 201, Ontario, OR 97914**

Terry Finnerty – I’m just asking questions out of curiosity. For one thing, you’d mentioned something about the floodplain issues and some clarification on that... Is there any risk to that? A flood in your property and do you have a contingency plan for how to rectify that? You’ve already answered the things about ATF and stuff so, I won’t ask anything about that. But I am kind of curious about other potential natural disasters that should be considered. Is it near any aquifers, is there any water sources that are of concern?

Eric Evans – I’ll pull up our fire map. Floodplain maps, sorry.

Terry Finnerty – Nobody expected 100-year storm 3 or 4 years ago, either. It’s good to plan for things like that, as well. Even though they’re not normal.

Clark Forsyth – You were saying Mike, those are storage containers. So, I think maybe one way to address that, as a contingency, would be, it depends on the severity, the quickness. If it comes quick, you’re all screwed, everybody is kind of a mess. If he’s got time he could get them in, the trucks and haul them out.

Terry Finnerty – We’d all hope so. But even ag producers have to have chemical sites, reparation sites and things like that.

Clark Forsyth – He falls under the ATF. So, I would suspect they’re pretty...

Terry Finnerty – Like I said, I’m just asking for curiosity and clarification.

Mike Eicher – So, with regard to moving it, I would have to move it to another secured storage facility, which would be a considerable distance and probably not feasible, in the event of a severe event. I would probably say, you know, if something happened, that’s why we’re trying to locate it a long distance from everybody so it would be safe where it is. Maybe the product would be destroyed, but again, that’s why I have insurance. So, the goal would not be to try and relocate them, but to keep them in a secure enough place, where we wouldn’t have to relocate them, no matter what came at them.

Eric Even – I’ll answer a little bit of the question, when it comes to floodplain stuff. So, we have floodplain regulations, they’re up to date. They’re using the FEMA and Oregon’s Model Floodplain Code. If you look at the screen, the blue area is actually what we call the special flood hazard area also known as the 100-year floodplain. So, we don’t regulate the 500-year floodplain in any NFIP programs - the National Flood Insurance Program. When I was talking about that small area... that’s the tiny little area that’s actually within the floodplain. It’s way-way low along the creek there. The proposed use is, you can see up in the upper right-hand corner... Can you see my mouse? There’s a white, kind of alkali... Yeah, I think somewhere in that area is actually where the proposed magazines are going to be stored. If they were within the special

flood hazard area, we have special requirements about anchoring and elevating in those areas, but that's not of concern.

Kathy Clarich – Ok.

Terry Finnerty – So there is ATF. The Homeland Security has no concerns with that? Or is that part of the permitting process?

Mike Eicher – Well as a Federal Explosive Licensee, it's my job to determine a suitable location, then the ATF comes and inspects afterwards and tells me how suitable a location is selected. So, it is kind of backwards, but that's Federal Government's regulations, in my opinion.

Terry Finnerty – Ok, thank you.

Kathy Clarich – Is there anybody else for this action? Is there anybody opposed to this? Hearing none, I'm going to close it to public testimony.

### **Closed to the public**

Kathy Clarich – What's your question, John?

John Faw – I see it's up in the crook of the canal there. I drove out by there. And I couldn't tell the elevations from the canal to where your actual site is exactly. There is no chance of that canal breaking and getting to where these going to be sitting up there, is there? It doesn't look like it.

Mike Eicher – It is below the canal. So, I suppose there is a possibility of the canal breaking and getting in there. The likelihood of shipping containers being transported long distances with the amount of water that the canal can put out is, I don't think, very high. It could you know... It would create havoc in the site, but it wouldn't create any undo hazard to anybody else other than obviously to the water. It's going to be a hazard to anybody else, but I don't see the shipping containers being transported by the canal water.

John Faw – Because they are up on the high ground back there, aren't they? Just below the canal?

Mike Eicher – They're up higher. They're still below the canal level, but they're up higher. They're not down in the very bottom, where the canal would tend to go to.

John Faw – Ok. That was just a question. Because I've never been back up on that high canal back in that country.

Mike Eicher – Sure.

Kath Clarich – So, the conditions were?

Eric Evans – So I have them, the proposed conditions as: a letter from the Nyssa Rural Fire Department must be submitted, stating the requirements of the driveway for fire protection have been met. That's the prerequisite. Now, performance standards-wise, I've got: adequate fire standards shall be maintained. Storage units must be in accordance with AFT, NFPA and Oregon OAR Chapter 837. Driveway to the site must be 25-foot-wide, all-weather road with adequate all-weather turnaround space and supporting 60,000 pounds. The driveway must have an unobstructed height of 14-feet and the grade shouldn't exceed 10%. That's according to exhibit

#3 – the letter from the Nyssa Fire Department. B. – is retail sales of fireworks are not permitted. C. – is business must comply with occupancy standards, if any, for the type of business or type of uses associated blasting, explosives and wholesale of fireworks businesses. D. – is no testing or lighting of fireworks are permitted on the site. E. – applicant must use existing driveway access off Cow Hollow Rd.

Kathy Clarich – So, I’m going to ask you this question. “Lighting of fireworks permitted on the site” – does that include where the house is, too? It’s on one piece of property.

Eric Evans – So, here is the deal about these conditions. These are conditions that I am proposing and that one is based solely on, for that letter of opposition. So, if that’s the way you guys want it to, because it’s the Commission that imposes these conditions... I just recommend them or propose them. Then we can reword that, to make it more clear, that you don’t want it at all on this parcel.

Kathy Clarich – Well, because you have “on this site”. So, I just didn’t know what you were considering “a site”. It’s kind of broad.

Eric Evans – I was going with, in order to... In order to have this home business, on this site, the condition would be to not interfere with any of the agriculture, as stated in that letter. That we would just prohibit it at all on this parcel.

Kathy Clarich – Ok, I am fine with that.

Eric Evans – So, I guess I would propose that we change it from... Change the word “site” to “parcel”.

Kathy Clarich – Ok. Any comments, guys? Then I need a motion for the staff report and finding of facts.

John Faw – I’ll move forward...

Mike Eicher – Can I make a comment really quick on the no testing of firework shows?

Kath Clarich – On the site? Yeah.

Mike Eicher – So, I am required by ATF and statute and everything to confirm function of fireworks that I receive. And to make sure that they function properly and the way that they’re supposed to, before sending them out on to other display sites. So, the “no testing” slightly impedes my business. I am not always going out to the magazine and just lighting off fireworks. I restrict that completely, because obviously every time I shoot a firework, that’s not making money; it’s not making money and I am just burning money during that, so I don’t do that just for fun. And then the other comment, “no firework shows on this site, on the parcel”, I just feel that’s a little bit restrictive, because it’s family property and they’ve enjoyed private fireworks shows there before. It’s, you know, always permitted shows and legal shows, but again we don’t do it. We haven’t done a New Year’s show there for at least since 2017 and maybe before that. So, there’s not a lot of firework shows have gone on out there. So, I just feel like that’s a little bit restrictive.

John Faw – Do you have a place where you do that testing? Like in a dug-out pit or whatever? They must have some site there?

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Mike Eicher – No. The best way to test them for function, is to just let them function. And like I said, it's not done a lot it's just, if we get a new product that we don't understand how it completely works or haven't seen it work... That's another thing, is we do go to shoot-offs before buying product and see how product works. But if we should get something in, that we don't know how it works, then it's our responsibility to know how it functions, before we put it out on a job, for safety sake. Because if you don't know how it functions and what it's going to do, then you can't adequately predict the area and everything that it's going to require to function.

Kathy Clarich – Then I could see how that could be a problem for the neighbors, interfering with their cattle ranching and stuff.

John Faw – Isn't there BLM, right behind there too?

Kathy Clarich – Probably.

Mike Eicher – Yes, there's BLM back there.

John Faw – I was thinking that there was some BLM back there close. Because, if one of those got away and started a little fire out there, it could get real interesting for a lot of folks.

Mike Eicher – Absolutely! And like I said, we don't test very much, very often and when we do, we're very careful to restrict it to times of year when the fire danger is low. I don't test anything over the 4<sup>th</sup> of July or the summer months. It's just not safe to do that.

John Faw – I wonder if we could put that in there to limit it to the wet winter months. Because that would, should help pacify the neighbor as well, because the cows aren't going to be out.

Linda Simmons – But then you're telling him how to run his business.

John Faw – No I'm not, but I am telling him what we could maybe approve.

Kathy Clarich – Yeah, because...

Teresa Ballard – But that neighbor's complaint was about New Year's Eve issue.

John Faw – That's true.

Teresa Ballard – That's the middle of the winter...

John Faw – But if that's a licensed show, that wouldn't be an issue there anyway.

Kathy Clarich – But do they have to get a permit for the show and who do they get it from?

Robert Quick – Yes.

John Faw – I'm sure they do.

Linda Simmons – He has to be a licensed...

Robert Quick – He has to get a license.

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Mike Eicher – Yes. Every time we shoot a show we have to get approval from law enforcement and the fire authority and then that approval goes to Oregon State Fire Marshall’s Office to issue our permit for the display.

Teresa Ballard – I was thinking that you said that it was restrictive, if the family could not use those? Is that... Did I misunderstand you?

Mike Eicher – Well, what I said was, they’ve had New Year’s Eve displays. Most recently we did display for my mom’s 70<sup>th</sup> birthday. And you know, it’s family property and it’s where mom lives. So, we did the display out there for her. That was in April of this year. So, it was a permitted display, permitted and legal display and everything.

Teresa Ballard – And how did the neighbors’ cows react? The neighbor complained about his livestock.

Mike Eicher – Yeah, and mom has horses and cows on the property. And they never seem to be super concerned about the fireworks. They may jump, when they first start going, but they realize that they’re not, the fireworks aren’t chasing them, that they’re going up in the sky and they go back to eating. The neighbors, they’re farther away, the corrals are farther away than my mom’s corrals. So, I couldn’t tell you for certain how their animals react. I can only tell you how the animals I have direct sightline with reacted.

Teresa Ballard – Well, his letter addressed the fact, that there was some mayhem caused by it.

Linda Simmons – Two years ago.

Teresa Ballard – Yeah, so that would be a concern. Because it’s his normal agricultural practice to have that livestock there, I would think?

Mike Eicher – But he mentioned New Year’s Eve. And like I said, we haven’t had a New Year’s Eve show out there since at least 2017, because I bought the business in 2018. And I’ve been doing commercial shows. So, we haven’t had a display, a New Year’s Eve display out there, since at least 2017. And, you know, it’s a licensed, permitted display so there is that, and there’s nothing you can do about other neighbors buying fireworks and celebrating New Year’s Eve. It’s a fairly common thing for people to celebrate.

Kathy Clarich – Ok, thank you. I don’t know...

Clark Forsyth – I understand the neighbor’s concern. But on the other hand, it’s like, so what if the neighbor on the other side of them lights off fireworks.

Eric Evans – I will put a little bit of... I mean, I’ll give you my thought about it anyways, even, just because you didn’t ask for it.

Clark Forsyth – Let’s hear it!

Eric Evans – But, so one thing to keep in mind, is that agriculture is a protected activity, is a protected use out here. So, that’s the only protected use out here. So, I mean, I would just say, keep that in mind is, we’re protecting agriculture to Senate Bill 100. We’re not protecting anything else. So, we should be looking through that lens, in my opinion.

John Faw – Now, if they're permitted that is taken into consideration when a permit is issued, is it not?

Eric Evans – Well, I mean, are we talking land use, because no, not necessarily. Because land use would require the ability to have public comment. So, from a land use perspective, no, not necessarily, because, I mean, you don't satisfy Goal 1, that citizen involvement. You don't satisfy, you know, some of those aspects. You don't have quasi-judicial process to allow for that. So, that's what we're looking at right now. So, I mean, I guess, I would just say for you guys, you guys need to determine... the Commission needs to determine if you think that condition is necessary to protect that protected activity, that protected farming. If you don't, I mean...

Kathy Clarich – Well, I think that's part of our reasoning. I mean, that's our purpose, is to try to protect that.

Teresa Ballard – And you know, Kathy, I live next to the rodeo grounds in Nyssa. And the firework shows that are put on for Thunderegg Days are fabulous. They're really nice! But I wouldn't want my livestock to be subjected to that. It doesn't go on real long, but it would be enough to really upset a bunch of cows. It's not like the fireworks that we could buy to set off for the 4<sup>th</sup> of July, as individuals. It's a professional deal and it's wonderful! I think Mr. Eicher does a wonderful job. But my concern would be for that farmer who has that livestock that needs to be kept calm.

Kathy Clarich – Yeah, that's my concern too, because...

Chad Gerulf – How far away is the corrals and stuff?

John Faw – They're aways.

Eric Evans – That brings up another good point too, is that, as part of our findings, because I didn't have anything for that. But I mean, I don't know how you can do that. But there is some criteria that talks about noise and other nuisances...

Robert Quick – Item 10.

Eric Evans – There's one about distance. That's what I was trying to look for. It talks about increasing distances, increasing setbacks to structures to reduce possibility of over-shadowing adjoining properties, noise, odor or night lighting. I mean, I look at that and I didn't see... I didn't see like a reasonable way to, for that one to contribute to that. I mean realistically, it's about that loud bang. I mean we all have those dogs or cats or whatever. Cows can be the same way. It sounds like the cows broke through a corral. I think, that's a problem or could be a problem. And what we're doing is, we want to eliminate those conflicts. And in my opinion, you know, having these aren't necessarily eliminating the conflicts. And we can talk about it being too restrictive and the whole fact that, yeah, the neighbor down the road can go out and buy some fireworks and light them off, that's fine. But the neighbor also isn't getting a Conditional Use Permit to store those on their site, either. So, I mean I can see it as a potential way of doing it, but...

Chad Gerulf – And that's a whole another caliber of fireworks. I mean, it's not like a firecracker you're getting... I mean, it's a massive firework.

Kathy Clarich – It's a show.

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Eric Evans – And they’re aerial, right? I would assume.

John Faw – I’ve gone on some pretty good shows, out on the farm.

Eric Evans – Yeah.

Clark Forsyth – I was going to say, I’ve been on a couple of those farms that don’t seem to be too worried about their own livestock.

Kathy Clarich – When you’re weaning calves, they aren’t by their moms, and they go berserk!

John Faw – They go berserk all the time.

Eric Evans – No, they’re fun. I love fireworks displays, they’re one of my favorite things.

Kathy Clarich – I do too, so...

Clark Forsyth – Hey Mike, just for the sake of the argument. Can I ask you, do you have another area to test that or are you land-locked there where you have to test on your property right there? When you’re testing, could you go out to Jamieson? I have no idea, I am just asking the question.

Chad Gerulf – Yeah.

Mike Eicher – Sure. I currently live in Ontario. This is my mom’s property or my brother’s property. And so, I wouldn’t have an area that I would be able to readily use to test on. I suppose I could ask about, the Jamieson property, about potentially testing out there. So, yes that would be a possibility.

Eric Even – Did they historically test out there?

Kath Clarich – He must be testing out there.

Mike Eicher – What?

Eric Evans – Historically, did they test out at Jamieson, when they had the magazines set up out there?

Mike Eicher – Yes, yep. Any testing that went on, went on out there.

Robert Quick – How close were the other property owners to you out in Jamieson?

John Faw – Well, that’s a big parcel...

Kathy Clarich – That was a big one.

Eric Evans – That’s all farmland, right? So, there’s not a lot of cows really close.

Mike Eicher – Yeah, it’s all farmland out there. They’re still about the same as this site would be.

John Faw – But there are cows?

Eric Evans – Right.

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Teresa Ballard – But it wasn't livestock so much was it?

Mike Eicher – The property there, Kenneth raises cows there. And then the mom raises cows. There is livestock around there.

Teresa Ballard – Is it as close as this other neighbor, who's complaining?

Mike Eicher – It's closer.

Teresa Ballard – Is it?

Mike Eicher – Yes. Kenneth's livestock, he owns the property that the magazines currently sit on. His livestock is very close, when they bring them in, off the range.

Eric Evans – Because, I mean, I don't think that my proposals are always the only proposals out there. But does anybody see like the possibility of limiting times of year? And he could chime in on this too, would that benefit? Like, when cows are out on the BLM pasture, would that be a better time? Is that a reasonable thing? That's hard, right?

Linda Simmons – You can't ask him to manage his...

John Faw – It's the wrong time of year for fire.

Eric Evans – Oh right. True.

John Faw – You need to do it when it's wet and damp. Not summer-dry, when the cows are out.

Eric Evans – So timing: time of year or time of day. I mean really, isn't going to affect how those are going to affect the cows.

Linda Simmons – What about a simple notification to that neighbor that they are going to do it. But then, you are still requiring him to do something.

Clark Forsyth – I think that's ok.

Chad Gerulf – That'd be a courtesy.

Linda Simmons – A courtesy.

Clark Forsyth – Because he is doing a different operation on ag property.

Eric Evans – But here is my deal is that... So, I mean let's say the notification doesn't happen and so, I mean I hope you guys can appreciate who that neighbor is going to call and complain because we allowed this to happen.

John Faw – I'm wondering if we could minimize it and leave the test out at Jamieson because that's one owner with a large tract. Because he's not doing it a lot.

Kathy Clarich – And his cows are already used to it.

John Faw – Yeah. And it is not something new and different.

Kathy Clarich – Desensitized, or whatever you call it.

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John Faw – How does that sound, Mike? Would that be a “possible”?

Mike Eicher – Yeah, that’s a possibility. I could also notify the neighbor. This letter of... Well, when I called Mr. Sauret, that was the first time I’d heard anything about fireworks upsetting his cows. He’d never mentioned it to any of us before. My other, I guess concern, about restricting it is, if mom wanted to have a small fireworks display for her birthday again or something... It doesn’t make sense to me that my storing of fireworks out there, would make it so she couldn’t have fireworks for her birthday. That’s all.

Linda Simmons – That’s personal.

Eric Evans – But, I mean I don’t think that changes... Just like the neighbor up the street. If in fact you have... And again, this is just my opinion. take it for what that is. If the neighbor up the street that’s wanting to do a fireworks display isn’t coming to get a conditional use permit that’s going to conflict. That’s, kind of the difference, in my opinion, is that you know, for this conditional use permit, for this home business, we have to either avoid or minimize conflict with the protected use, which is agriculture.

Clark Forsyth – So, just one other little thought. When he is operating out of Jamieson and he has the show at his mom’s house?

John Faw – That was a permitted deal.

Clark Forsyth – Yeah, that is what I mean. But so now that he is moving his containers to his mom’s house, he can’t do that?

Robert Quick – He can’t do that.

Eric Evans – He didn’t have a land use action... I mean, I guess that’s what you guys are charged with, right, is deciding what you guys feel is going to minimize or eliminate that conflict. And so, when I put these proposed conditions together, I try to come up with something that’s thoughtful, is going to minimize that conflict.

Chad Gerulf – If we’re going to minimize it or avoid it, we have a couple options? He can either go to the land owner and say I want to do this, three times a year, just as an example. What works for you and your cows, what works for both of us? Or you just can’t do it. That’s the only way to minimize it or avoid it.

Eric Even – Or you guys could add to the condition. I don’t know how silly this is either, but he provides a written statement from each of the adjoining land owners that they have no problems with the display.

Clark Forsyth – Who is he giving that to?

Eric Evans – I am going to get all the phone call anyways, so I might as well get the letter. It would provide a written statement from the adjoining land owners to the Planning Department.

Terry Finnerty – Can I just ask something from the floor?

John Faw – Certainly.

Eric Evans – We’re just closed to public comment.

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Terry Finnerty – I looked at the property location. Isn’t there a firing range or shooting range closer to his property than Jamieson?

Linda Simmons – That’s a good idea.

Terry Finnerty – Off of Lytle Avenue out there, they do gun testing. It’s already approved for that out there.

Eric Evans – It’s all BLM.

John Faw – It is all BLM. That gun range is on BLM.

Terry Finnerty – Yet they use bangs and firearms and targeted shoots. Can’t you get a permit for that out there?

Eric Evans – Or even the Ontario Gun Club or the Vale Gun Club, right, just out there off of... Still off of Lytle, but I mean I guess that’s a thought, but...

Clark Forsyth – They probably get complaints every time they have a shoot.

John Faw – No it is in a hole. It pretty well contains the noise out there. The one in Ontario is noisy.

Eric Evans – And shooting off aerial... they might frown on shooting off aerial fireworks next to the airport.

Teresa Ballard – We have done actions before that related to shooting clubs and other kind of things that were around livestock, intensive livestock. My recollection is that we’ve declined those because of the disruption of the agricultural issues. And I remember when we considered the location of these containers at Jamieson. And at that time, you know it was presented to us as if it was a very vacant kind of property with no livestock. It was apparently, you know, agreeable kind of situation for that location of that entity. But where we have a little, we have some conflict to start with. And we’ve have not acted in favor of noisy activities in livestock-intensive areas. I wouldn’t be in favor of... I don’t think the testing maybe is so bad. But I think the shows are a problem. And I would not be in favor of allowing this, based upon the protentional for further angering the neighbors.

Linda Simmons – He’s not doing shows.

Robert Quick – He’s not doing shows. If we keep him where he is at.

Teresa Ballard – But his mother’s birthday and New Year’s Day, which hasn’t been for a long time. But you know there’s that potential there.

Robert Quick – If we keep him where he is at, he will still be able to get a permit to do a show at his mother’s, because there is no land use involved. So, we won’t be alleviating that show. He can do it anytime he wants to.

Teresa Ballard – True, but we would be not allowing a conditional use that will further that situation. I get it. It is a weird argument I am making. But you know, we are still trying to protect agriculture. And it is a two-edge sword because we want to encourage business, and like I said

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earlier, Mr. Eicher has a nice business and does a good service to the community. But I am not in favor of disrupting a livestock operation that may be disrupted.

Chad Gerulf – What if we do a continuance and he talks to the neighbors, sees if he can come to a solution.

Teresa Ballard – That would be an idea. A good idea.

Eric Evans – Here's the inherit problem with a continuance tonight, is that we've all decided that we're not going to interrupt Thanksgiving and Christmas time with a meeting. So right now, the way we sit, we approved this as a completed application on 9/26. The 150 days where the County is obligated to give a final action on this, is actually February 23<sup>rd</sup>. So, again we're not... We're doing our next meeting in January so that gives us about 4 weeks in there to come up with a final. That means you guys give an action and if that's appealed, then the County Court... There's no way we can do that.

Clark Forsyth – Mike, I have one more question. Is it that important to you to have these containers magazines on this property, if you cannot do a firework display? Because like Eric is pointing out, you're asking for a business to be placed there. So, we're bound to hold up that protection for the agriculture. That's kind of a moot point, really, to throw that out the window for you, we would have to do that for everybody else. That is not our job, you know. Our job is to try to keep some peace and protect those rights. Just as your rights. So, if you want to continue to have a firework display or whatever you want to call it, at your mom's house, then you can't have the containers there. That is the way my brain is looking at it. Do you have a comment to that?

Mike Eicher – Well, obviously my request is to move the containers there. That's the desire and the reason for the hearing. I only made the comment on the restrictions because I felt they were a little restrictive.

Clark Forsyth – And they are for a reason.

Mike Eicher – Sure.

Clark Forsyth – Is it a deal breaker for you though?

Mike Eicher – No, my desire is to move the containers out there.

Clark Forsyth – Ok. Thank you.

John Faw – If he were to get a permit., could he not do a display out there going through the process? Just the same as he would in town...

Eric Evans – I don't know who he gets the permits from? Are you talking permits from my office?

Robert Quick – To do the show?

Eric Evans – Whoever he goes through.

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Robert Quick – Fire Marshall, the Sheriff’s office, and the local Fire Station, which in turn, is submitted to the Fire Marshall. But if we put the clause in there that he stipulated, that there can be no fireworks on property, then he can’t do that.

John Faw – But, is that the same as having a licensed display? Because I can have fireworks on that place and that would be out of bounds. But if he were to do it with a licensed permit, because that’s a whole other...

Eric Evans – But I don’t know what that process is. So, if we’re not getting notification to... and the land owners aren’t agreeing to it, then they’re going to be the ones that potentially, well potentially there’s a lawsuit because they’re affecting them. But also, they’re going to call my office saying you guys allowed this. What are you going to do to fix it? And then I’m going to say: I wasn’t given any tools by the Planning Commission to fix that. *INAUDIBLE*.

Kathy Clarich – I have no problem with it. If it’s not a deal breaker for him, why don’t we approve it with what we got on there?

Eric Evans – I want to remind you to just change “site” to “parcel”. I think that is what we discussed.

Clark Forsyth – It will be up to somebody else to police it.

*Clark Forsyth 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.*

*Clark Forsyth made a motion to approve a Conditional Use Approval for Home Business for Homeland Fireworks Inc. with changing the condition from site to parcel. Linda Simmons seconded the motion which was unanimously approved by the Commissioners present.*

**Applicant:** A4 Quality  
15005 NW 2<sup>nd</sup> Ave  
Vancouver WA 98685

**Owner of Record:** A4 Quality  
15005 NW 2<sup>nd</sup> Ave  
Vancouver WA 98685

***Consideration to amend an existing conditional use permit in a Rural Service Center zone***

Kathy Clarich – Now is the time to hear the request for a conditional use permit for commercial activity in a Rural Service Center zone for applicant A4 Quality Property LLC. Planning department file 2022-09-013.

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 basis or disclose any ex parte communications, including site visits?

***John Faw, Robert Quick, Kathy Clarich – site visit***

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 6-3F-5 and MCC 6-3G-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 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.

7. 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 going to be an amendment... It was actually an amendment to a conditional use, back in 2018, probably one of my first Planning Commissions as Planning Director. And it

is a reinstatement of a portion of a conditional use back in 2019. It's for a truck repair shop in a Rural Service Center. There is some new paperwork. If you look at that map there is part of the access is going to be through another tax lot. And there is some paperwork with that, as well. I am not sure I printed that off and got that out. So, again this is at Farewell Bend. They already have a truck shop and convenience store. It's going to be... It's part of TA's business model as it is. This is Planning Department File #2022-09-013, Tax Lot 700, Township 15S, Range 45E, Section 4, County Ref# 14781. That is my entire Staff Report. I mean, we've been here, we've done this and approved it once.

Kathy Clarich – So there is a change in access is all? Or is it adding something more?

Eric Evans – No, there is a tax lot out in front of it, where it was designed for a hotel.

John Faw – Tax lot 800?

Larry Hinton – Yes, tax lot 800.

Eric Evans – Let me pull up the tax lot map really quick. So, if you look at the map there, you can see tax lot 800, I believe, right? So, part of the new access is going to go through that. Right behind tax lot 800 is where... So, right now it's all in the dirt, right, Larry? On the dirt, on this map. That is 800. The section to the west of 800 is where the new truck lot is.

Robert Quick – Adjacent to the parking lot?

Eric Evans – Adjacent to the parking lot. You can see how it is marked out there. In the south, southern quarter. You can see kind of where the entrance is going into the dirt, how the painting is of the lines. So that is where it is going to go through. You are going to have access to the, to the truck... Am I correct?

Larry Hinton – Yes.

### **Applicant Testimony**

#### **Larry Hinton – 1796 4<sup>th</sup> Ave East, Vale, Oregon.**

Larry Hinton – I am the engineer of record on this project for both the applications. What I provided you is an exhibit... What they've done, as part of the TA franchise, you are required to have a truck service repair shop. For those that were on the Board the last time I presented this, they were going to have a truck wash that was going to be part of this also. It since has been eliminated due to water concerns out in that area. The facility is going to employ roughly 28 people. It is going to be a 24/7 facility. It is going to utilize the exiting access off the business alternate route out there. So, it is just down from the State scale house, where that access is. As Eric pointed out, the exiting access does go through tax lot 800, and we provided him, a draft copy of the legal document that the attorneys for both parties that have drawn up. They have not been signed or notarized yet. They are in the process of providing those documents. One of the other concerns that I know the Board's had to deal with, is the sewer lagoon ponds. This facility actually is going to increase the water flows to that pond, just with the restrooms and shower facilities for the workers. And so, it should help with some of the older problems maybe they've had. They also have provided a report of a contract that A4 Quality Property's hired an engineering firm out of Eagle, Idaho to address specific issues on those lagoons to get them where they're operating properly. Do you have any other questions?

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Kathy Clarich – So I am assuming, that the truck shop is going to be kind of right in this little area here? You can come in this way or come in this way?

Larry Hinton – Actually if you look at the traffic flow pattern. If you look at the exhibit #1.1, it shows the entrance coming in and the flow will be that the trucks will come in that east entrance. And then they will loop around. There’re three service bays in there.

John Faw – They’re coming in behind?

Larry Hinton – They’re coming in... The front of the building is actually facing the highway. So, the back of the building is towards the interstate.

John Faw – Oh, ok.

Robert Quick – So the egress is off this west side, right? They’ll be coming in here and go through the shop this way?

Larry Hinton – They will come through the east side. And then they will exit through the west side. As you can see, that it is wide enough, it is almost 40- foot wide. So, they will be able to have two-way traffic there. You have to have two-way traffic, because you have employee parking on the one side. It meets all the ADA requirements. If you’ll see, we do not have a safe passage to the right-of-way, the public right-of-way out by the highway, and therefore, we have designed and it is this item, on page 1.1, item 19. And what that is, if you don’t have direct access to the public right-of-way, then you can provide a safe passage, a safe area, what they call a “safe zone” in the Fire Code. And that is our safe zone. There are already fire hydrants in place. There are already sewer and water services brought into that site from previous phases.

Robert Quick – Did you say three bays or four?

Larry Hinton – There are three bays, they’ll be active with truck service.

Robert Quick – Ok.

Larry Hinton – There is a fourth bay that’s for tire shop.

Robert Quick – Got it.

Larry Hinton – And that’s really why the wash bay was eliminated, because TA explained to them that the number one thing they will be doing is tires.

Kathy Clarich – Tires and chains.

John Faw – Is there still room to add the motel later? If they want?

Larry Hinton – I would say no.

John Faw – Ok. There’s not enough room between this and the lagoon there, on the other side.

Larry Hinton – The sediment ponds for the storm water are over on that parcel. They would have to move that motel to the south and east. So, I would say right now, it would be no.

John Faw – Ok. Doesn’t seem to be a terrible need for it. Most of those guys could live in those things anyway.

Kathy Clarich – Ok any other questions for him? I need to ask is there anyone here that's in favor of this action? Is there anyone that's opposed to this action?

**No Proponent Testimony**

**No Opponent Testimony**

**Closed to the public**

Kathy Clarich – What were your conditions? Valid for a period of two years from the date the permit comes effective.

Eric Evans – I don't think I had much. I mean this is Rural Service Center Zone. So, there isn't a lot of protections to have. Just making sure that anything they need with DEQ for plan review or construction to connect to those sewer lagoons. Building permits, getting a certificate of occupancy prior... Larry knows all that and will work with Adele on that stuff anyways.

*Robert Quick 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.*

*Clark Forsyth made a motion to approve a Truck Repair Shop in a Rural Service Center Zone. Robert Quick seconded the motion which was unanimously approved by the Commissioners present.*

**Applicant:** Jennifer Gerulf  
408 Stanton Blvd  
Ontario OR 97914

**Owner of Record:** Jennifer and Steve C. Gerulf  
408 Stanton Blvd  
Ontario OR 97914

***Consideration of a Conditional Use Permit for a home business in an exclusive farm use zone.***

Kathy Clarich – Now is the time to hear the request for a conditional use permit for a home business for the purpose of operating a venue in Exclusive Farm Use zone for applicant Jennifer Gerulf. Planning department file 2022-09-011.

1. 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.
2. Do any members of the County Planning Commission need to abstain?  
*Chad Gerulf – I think I might. I am partial owner.*

3. Do any members of the County Planning Commission have any conflicts to disclose?

***Chad Gerulf – I am partial owner.***

4. Do any members of the County Planning Commission have any bias to disclose?

If so, state bias.

***All the Planning Commission members know the applicant.***

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

***All the Planning Commission members know the applicant.***

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

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

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

Eric Evans – So this is Planning Department File #2022-09-011. So, this is a conditional use approval for a home business, for the purpose of operating an event center or venue, any kind of venue, birthday parties. This is located on tax lot #503, Assessor's Map # 17S47ED01, Malheur County Ref# 20861. It is located off Stanton Blvd, left from Hwy 201, the first driveway to the left. It is zoned Exclusive Farm Use. The parcel is 15.83 acres. It's currently being used... There is some farmland, at least one home site. It has some dryland and a pond on it as well. Adjacent properties are mostly used for farm and range use. And also, some Goal 5 protected property across the street too, which is the gravel pit, owned and operated by the applicant's trust or family. So, this is an existing building, so there already is an existing DEQ-approved waste water treatment system and a well. Obviously, wedding venues, you can have quite a few people there, so, part of the proposal is that, you know, for those type of events, they would bring in porta potties, when necessary. There is no natural hazards on the site. The property does have water rights, but not directly where the venue is. There is some, right around that area. So, this is very similar to the property that we had off Jacobson Gulch Road. The difference with this is that their proposal is, the majority of that event, is within an existing approved building. If you remember with that other one, there was a large discussion about outdoor and it predominantly... that predominance outdoors, we made a finding that, hey look, the business and those items are going to be located within the house and storage and what not. So, predominantly the business was... This one is a little less shaky with that one. They do live right directly across the road from that, in the old Joe Stirm's old house, if you guys know where that one is.

Kathy Clarich – So we're not worried about the neighbors' complaining?

Eric Evans – The closest neighbor is a tenant.

Jennifer Gerulf – That is vacant now, because insurance won't approve coverage on that old thing. So, it's got to leave.

Eric Evans – Who is you closest?

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Chad Gerulf – It is Brian Taylor.

Eric Evans – Where is that at?

Chad Gerulf – He is just on the other side of the gravel pit.

Eric Evans – Ok, so, way up on the other side of the gravel pit.

Chad Gerulf – Him and Dr. Phillips are.

Eric Evans – Really close right there. They're quite a ways. I mean they're not line of sight, really.

Chad Gerulf – They're not. You can see Dr. Phillips.

Terry Finnerty – We are.

Eric Evans – You are? Oh, you are line of sight? Ok.

Terry Finnerty – From the venue, for sure.

Eric Evans – I don't know where you're at.

Terry Finnerty – Highway 201, just below Stanton Blvd.

John Faw – Oh you're on the bottom end there.

Eric Evans – Oh, just across the road then.

Terry Finnerty – No, we're across the field. Is a better way to describe it.

Eric Evans – Ok, Got ya. On the lower end of the field. So, that minimizes some of that conflict as well, and an indoor venue obviously. There are some stipulations that we put, just go over the conditions really quick. Basically, the proposed home business must be confined in boundaries of the subject property and tract. So, I put that tract, because not all the property is in common ownership by their family. And so, I think that they would have the ability to maybe park some stuff across the street. That is not necessarily the same parcel, but it is still where their house is. And if they need some overflow parking, at the gravel pit they have... and those type of things. So, I did put tract on that one, that was a little different than the last one. And then exhibit 3 is the Fire Department, they're wanting to make sure there's a turnaround for fire apparatus: must be constructed and approved by the Fire Department. And as performance standards, I have: adequate fire standards shall be maintained, any deviation from this proposal including, but not limited to additions of new structures shall void the permit and a new permit must be obtained. And also, there is a letter from Adele, that you guys received, as well. And it just talks about the change of use and meeting permits. And then possibly having some stipulations. Did you guys get that? We gave it to you tonight.

Tatiana Burgess – It was part of the paperwork, that was on your tables laid out. It was marked as exhibit #5.

Eric Evans – So basically, simply, it just says there is going to be a change of use of it, because it is no longer a residential nature. It kind of has a more commercial feel. So, to get the Certificate

of Occupancy... this doesn't say it in there, but there will be a couple of things they will have to go through. And the letter just says, hey look, you're going to have to meet those, in order to get that Certificate of Occupancy. And I did talk to Adele about what that meant. And for instance, what that means is, to be commercial in nature the door hardware, the locking hardware: you can't have a deadbolt inside, you have to be able to unlock it from both sides. And so, there're rules about the door hardware. Basically, that is the one change that will allow them to get an occupancy of 49 people. In order to get up to 100 people, which I am sure that they may want to look into, they have to have exit signs with emergency lighting. That bumps them up. So, her letter was just saying, hey look, there is a couple other little things to go from this more residential use as a personal deal, to a more commercial structure.

John Faw – Do they have to come back here once they expand it from 15 to 100?

Eric Evans – No, those are just Building Codes and we're approving it as an event center and the occupancy is realistically, up to the Fire Marshall.

Kathy Clarich – Ok. Your turn. State your name and tell us what you want to do.

### **Applicant Testimony**

#### **Jennifer Gerulf, 408 Stanton Blvd., Ontario OR 97914**

Jennifer Gerulf – So we bought this property a while ago. And it was a disaster. We've worked on it for 3 plus years now, cleaning and what not. And we've become farmers and ranchers since we bought this property, we've discovered. On this adventure, I wanted to build this building here, just to have a nice place. We originally were going to build another house at the end of the pond, but then this adjacent property came up for sale. So, Chad somehow, made me move up there. We want to maybe serve the community a little bit with this. There is not a lot of event centers around. I've had photographers out there, that are amazed by the pond, and the clean... It just has changed. So, I had seniors... moms call, for senior photoshoots out there and this and that. We want to open it up to baby showers, birthday parties, weddings. We did have a rare instance with Covid, when everything was shut down, somebody lost a son at the prison. So, they asked me to come down there, during shift change, and they had a funeral out there. Because they needed a place where everybody could come, kind of thing, during shifts. We want to do... some future plans, are a Christmas tree. Like maybe a little Christmas Tree Farm. We have talked to Andrew's Nursery about doing some stuff during the winter time as well. Maybe even a little farm stand for our kids because we love to garden and grow things and do

yard work. So that is our other goal. Maybe even a little farmer's market. Once we get this place cleared up and I have some free time on my hands to advertise that kind of stuff.

Kathy Clarich – Ok, does anybody have any questions for her?

Eric Evans – I don't know if you guys have drove by there and seen it. I did find Jennifer's Instagram. There is a little example. Now I have had the pleasure of going down there probably a couple of times before there was anything green on there. It's remarkable how much they've cleaned this up.

Kathy Clarich – So does stuff have to be in the building then?

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Eric Even – No, remember when... I can't remember the terminology out there. Predominantly or mostly...

Tatiana Burgess – Incidentally?

John Faw – You have to have the building, but it doesn't have to be all contained in the...

Eric Even – Right. I remember we made a finding to say, hey, look, maybe the venue, the bands aren't happening inside, but the business is actually run, mostly, from inside, so therefore, it met that standard. This one is different. I think we met it a little bit more how it was written.

Clark Forsyth – The buffet is inside. The food is inside.

John Faw – You can put the bar in there.

Kathy Clarich – The reception is inside.

Eric Even – I think the concept... Bands, are they mostly inside?

Jennifer Gerulf – Mostly inside.

Eric Even – Music playing inside, dance floor is inside.

Jennifer Gerulf – Dance floor is inside and outside. We poured something to the front of it as well and the big door opens up in the front. So, people can kind of choose what they want to do.

John Faw – I owned a place up off of Oak Rd for 10 years, but these guys never approved or let me do anything with it. So, I watched you guys take that from the mess it was to what it is. And I didn't know who was doing it, at the time.

Jennifer Gerulf – It has been a project.

John Faw – I thought you were going to build a house in there. And that was what you were going to do.

Jennifer Gerulf – Then this other opportunity happened to show up. It made sense to buy it.

Chad Gerulf – We made something out of nothing there. I mean, it has been pretty remarkable. The interest we've gotten from Boise area, it's been...

Jennifer Gerulf – Yes.

Chad Gerulf – We're actually pulling business. The potential's massive. We have a list local business people, they ask for cake... people that do cakes, flowers...

Kathy Clarich – Motel commendations and all that.

Chad Gerulf – Yes, and catering and all of that stuff. And so, I mean everybody gets a little piece and it helps. I mean it helps with local business.

Clark Forsyth – It cleaned up the hillside.

Jennifer Gerulf – Yes, it did clean up the hillside.

Kathy Clarich – So I am going to move this along. Is there anybody here in favor of this application?

**Proponent Testimony**

**Terry Finnerty, 4485 Highway 201, Ontario OR 97914**

Terry Finnerty – What our connection to the venue is, we have a direct line of sight across that field into it. We see the light from the shelter, which is no big deal. First thing I want to say, I am pretty much a big proponent of it, because I've seen the changes. I go for walks up Stanton Blvd and I looked at that woodpile and all the mess that was in there. And whatever could be dumping into the creek and everything as well. It's just remarkable improvement what you guys have done to the gravel pit. The way you've done it, it's just amazing to me. So, I just want to commend you on that as well. I really like what I see. We talked before... when you were first talking about it. Has it been really 3 years ago?

Jennifer Gerulf – Yep.

Terry Finnerty – My gosh. That is what happens when you get older, doesn't it? But I did have some concerns whether it really effects the venue itself or not... Anybody that has been along Highway 201, along there, realizes the huge volume of traffic increase out there. Night and day 24 hours a day out there anymore. ODOT and I have had conversations, twice this year already. Prior to that I have talked to highway patrol about trying to get some kind of remedies for the traffic out there. Which leads into one of my concerns, as far as the nature of the venue. You made a comment about a bar there. And that concerns me, because if your people are leaving... and just the concern that people are leaving there intoxicated or semi intoxicated... I have a concern about that, especially coming out on that highway, but also the traffic flow that comes over that ridge. I hear those trucks jerkin on their Jake brakes all the way down that hill, as you guys do. And it says 45 up above them. But boy, if someone comes pulling out of there slow or slow to react in that driveway, I fear for their lives, the way some of those trucks come off that hill. So, I think something with the county or the state to maybe remedy that or something to slow the traffic down, before it even gets that far, because that is a blind hill, if they're coming off there. If you're hauling tons of beets or gravel or whatever the case is, it hits a hard stop. And you mentioned, while we were talking, that someone's already ended up in the ditch down there. The other concern that I had, would be, that is one of the big ones - the noise. You guys are really good about it. I am going to tell you that. Ten o'clock, no big deal. I mean seriously, it's not as bad as the traffic and listening to the traffic every day, or the beet dump or those guys rolling down there. And there is no way to restrict that from what ODOT tells me, from the noise that those trucks make and stuff, coming down through there. Even when I am out there, standing in my front yard, cursing and shaking my fist, doing other things I shouldn't be doing. We won't go there, but you guys have done a great job. So that's really not an issue. I would trust that if it does become an issue, I know where you live and we can talk it out.

Chad Gerulf – For sure.

Terry Finnerty – Unless some drunk comes down, staggering across the field or somebody is lost up there.

Jennifer Gerulf – They're going to have to make it through a big ditch first.

Terry Finnerty – When you addressed the septic system, that kind of concerns me as well. I just wondered... You said it was a DEQ system approved in there. There is leakage to the Snake River from that little stream that goes through there. I wondered if that had been addressed. The other part is simply, just you leaving those venues... I don't expect you to police the whole highway for trash. But if it does increase, because your activity there, if you're going to help with some of that.

Jennifer Gerulf – I actually allow them to come back in the next day to go through and pick up all their garbage and debris around the venue and up above. And if they do not do it then, I keep their deposit and I do it.

Terry Finnerty – On the site, but even walking up and down that road... I walk up there and there are syringes and occasional condom tossed along that. I can only imagine... I am sure your clients are very clean and sociable people.

Jennifer Gerulf – We've had the sheriffs up there a couple times with people dumping trash on our property. And the drug use is up above on the hill up there, like we've called the sheriffs... We're already complaining with the trash, because we have people just dumping up there on us.

Terry Finnerty – That is actually one of the things I am hoping for, is more venues like that, where there're people out there, that are more concerned about that area, will raise their voices more and we'll get more activity, including... But again, I think, those are probably the two primary concerns. Again, all the traffic I've seen, lots of cars parked up there for some of the things you've done... I wonder what's your parking? If you're going to continue to park or if there's a remedy for that in your plan for parking somewhere off of the highway up there. Because there were a lot of cars up there, I don't know when it was, maybe a graduation or something up there before...

Jennifer Gerulf – I think at our daughter's graduation. It was right after Covid and it was out of control. Everybody was sick of it and everybody that got an announcement, showed up so...

Terry Finnerty – Overall, I have nothing, pretty much, but good things to say compared to what I am used to seeing that place look like out there. I just want to commend you again for it. But I do have some concerns. Like I said, I know you're nearby, and if we need to talk about those, hopefully I can come up and say hey.

Chad Gerulf – Absolutely.

Jennifer Gerulf – We recently opened up the other side of the property for parking. We expanded it and then we also flattened it more, up above, where we own the power thing, for additional parking up in that area.

Kathy Clarich – So you're planning on all the parking being on the property, none on the road?

Jennifer Gerulf – Yep. And if I have something... I had somebody ask me about an event coming up. They wanted quite a few more people. They're doing it during the summer months where they can do some stuff outside. And I told them: I'm charging you more because I will be in charge of parking cars. So, to make sure everybody is off the highway because I do not want people parking on the highway. It's too narrow right there.

Clark Forsyth – Yeah, I would say that is my only concern. The traffic is nuts up there.

Chad Gerulf – He is right, they zing over that hill.

Terry Finnerty – Just the other night... Those big trucks too. There is one guy constantly, comes down and you can hear about the time he comes over the top of that hill is when he puts those brakes on. So, he is rolling before, he doesn't even bother trying to slow down until he gets to that slope. 8% slope is a hard stop for a big rig.

John Faw – It's steeper than it looks. I have hauled big loads down there.

Terry Finnerty – I have walked up it a lot of times. The older I get, the steeper it gets. There is one other thing. I hope you're not upset with me. We've talked about it before, the building there, I have understood it is a historical site for that stage stop there and what the concerns are with those. If you're not making improvements or adjustments, if there's any issues with that. It would be really cool if you restored it. We've had that conversation...

Chad Gerulf – We're not going to get rid of it. There is a stage coach stop on the property. It was built in 1870. Joe actually talked to the Historical Society about it at one point. And they would come in and help, but then they wanted to take control of the building and the property. We are planning on restoring it at some point. It's expensive. We looked and the trusses, it's like \$20,000 for the trusses. I would have to get a third job.

Kathy Clarich – Do we have anybody else that's against it? Who is Terry Ann?

Terry Finnerty – Terry Ann is my wife.

Terry Ann Finnerty – No comment.

### **No Opponent Testimony**

### **Applicant's Rebuttal**

Chad Gerulf – We're always open to communication, if there's ever a problem, by all means that's for sure.

Kathy Clarich – Do you want to go over the conditions of approval, so we can get going?

Eric Evans – We already talked about the conditions in the beginning. We can talk about guests leaving. I don't know if there's really a whole lot of control about that. Most of these events, they would have to have an OLCC license. Do you guys require OLCC licensing?

Jennifer Gerulf – I do not require. Well, we have nothing to do with the alcohol. If they are bringing stuff in, they have to list it to me. And they have to either get a licensed person and I require them to get insurance and signing a thing saying that they are responsible for their guest.

Eric Evans – That was one of his concerns. The blind hill coming down Stanton – we could always do, maybe ask them to talk to the Road District, to see if there's some extra signage. And we could put that as a condition, if you'd like. Or you could just ask them to do that.

John Faw – Well if the county won't do it...

Eric Evans – Right, right. I don't think we can mandate the county to put any signage. I don't know the legalities of when...

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Jennifer Gerulf – They just put bus stop signs up for us.

Chad Gerulf – We've asked them to do truck signs for the pit and school bus signs. And they did both.

Eric Evans – Or maybe like “congestion ahead” or something like that or “event center”.

Clark Forsyth – Well, maybe during an event, you know at the top of the hill, that's the concern, is coming that direction, going up is not as big a deal, but coming over that... Maybe you could put a sandwich board out that says hey, event in progress, slow down.

Eric Evans – Congestion ahead or something like that. Really quick, I'll get through the other ones. Septic system - he did have a concern about that, this is DEQ approved... This isn't approved for the event center. I want to make that clear. This isn't approved for 100 people, or enough flow for that. It was approved as a 150 gallons per day. So, typical daily use is 75 gallons. So, it really isn't approved for a bunch of people.

Jennifer Gerulf – So I have actually built an outside... and I have two permanent porta potties out there. And if I have something more, then I charge them more to bring more in.

Eric Evans – So some of the parking off highway - I actually think that is a really smart condition to add to this, is to say that, to require all parking must be off of Stanton Blvd.

Kathy Clarich – Was that in their application?

Eric Evans – Was that in your application, I don't remember?

Jennifer Gerulf – I think we did go over some of that.

Eric Evans – I guess in a way... all aspects of the proposed home business must stay confined within the boundaries of a subject property. That probably includes parking. Right?

Robert Quick – It covers everything.

Eric Evans – I mean, I wouldn't have any problem with enforcing that, if it came down to it. So, if you guys are good with that, I think that does address that issue, as well. And the historical site for a stage stop - historical sites are actually a Goal 5 protected resource, just like anything else, but they have to be listed on our Goal 5 inventory. I am not aware that this is listed as a protected Goal 5 resource. From a Planning and Zoning perspective, there's not a whole lot of protections that we can guarantee.

John Faw – The only thing that we may want to add, is that you tip your lighting, so it doesn't shine in him.

Terry Finnerty – Honestly, it seriously doesn't bother me that much.

John Faw – I know, but you're not going to be there forever.

Jennifer Gerulf – I feel like, aren't we surrounded by trees pretty good?

John Faw – Petty well. I would just make sure your exterior lighting was tipped in, especially those LED stuff. It could be pretty bright.

Kathy Clarich – And it says here that all outdoors activities and noise will be done by 10 p.m. Onsite parking is approximately for 100. No public road parking.

Eric Evans – Ok.

**Closed to the public**

*Robert Quick made a motion to approve the staff report and findings of fact as presented. Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present.*

*Robert Quick made a motion to approve a Conditional Use for a home business for purpose operating an Event Venue. John Faw seconded the motion which was unanimously approved by the Commissioners present.*

**OLD BUSINESS**

*Robert Quick made a motion to approve September minutes. Linda Simmons seconded the motion. The motion passed unanimously by Planning Commission members.*

*Linda Simmons made a motion to adjourn the meeting. John Faw seconded the motion. The motion passed unanimously by Planning Commission members.*

Respectfully submitted, Julie Bromley.

Minutes approved by:

Name:

 2-6-2023

Date: