Before the Planning Commission

Planning Department File No. 2022-09-009

CONDITIONAL USE APPLICATION
FOR
ONE NON-FARM DWELLING

Planning Commission Meeting Date: October 27, 2022

1. **APPLICANT**: Weston Wettstein
   141 SW 3rd St
   Ontario OR 97914

2. **OWNER OF RECORD:** Weston Wettstein
   141 SW 3rd St
   Ontario OR 97914

3. **PROPOSED ACTION:** Conditional Use approval for one non-farm dwelling.

4. **PROPERTY IDENTIFICATION:** Tax Lot 400, T18S, R46E, Sec. 10; Assessor's Map 18S46E10; Malheur County Reference #6667.

1. **PROPERTY LOCATION AND DIRECTIONS:** from Ontario, head West on Malheur Dr. Continue for 1.5 miles and turn right onto NW 36th St. Continue North for 0.4 miles, then turn left onto Foothill Dr. Continue for 3 miles. The property will be on the left, slightly past 801 Foothill Dr, in Ontario, OR.

5. **ZONING:** Exclusive Farm Use (C-A1).

6. **PARCEL SIZE:** The parcel is 28.15 acres.

7. **PARCEL USE:** Vacant, with no irrigated ground.

8. **SURROUNDING USE:** All the surrounding properties are employed in farm or range use. To the north west, there is a single family dwelling.

9. **ACCESS**: Foothill Dr.

10. **SANITATION REQUIREMENTS**: A DEQ approved sanitation system would be required.

11. **FIRE PROTECTION:** The parcel is within the Ontario Rural Fire Department coverage area. (Letter Attached).

12. **NATURAL HAZARDS**: None.

13. **WATER RIGHTS:** The property currently has no water rights (Letter attached).

14. **SOIL TYPE**: The majority of soils on the property are class VIII, with an insignificant amount of soils class I and III.

15. **ZONING HISTORY:** A conditional use permit for a non-farm dwelling was issued in 2007 (CUP#2007-04-004), which was valid thru 2011. The non-farm dwelling was not constructed and the permit expired.

GENERAL CONDITIONAL USE CRITERIA
MCC 6-6-7 - GENERAL CRITERIA TO EVALUATE SUITABILITY: In considering the suitability of proposed conditional uses, the Planning Commission shall base its decision upon the following criteria:

A. Comprehensive Plan goals and policies, as applicable.

B. Specific plan recommendations

Finding: MCC 6-6-8-1 regulates the conditional use process for a non-farm dwelling.

C. Existing development and viewpoints of property owners in the surrounding area.

Finding: Letter notice was sent to adjoining landowners on October, 7th 2022 and published in the Argus Observer on October 7th, 2022. No comments were received.

D. Availability of services and utilities.

Finding: The parcel is located within the Ontario Rural Fire coverage area. All services and utilities are available.

E. The effect of the proposed use on the stability of the community's social and economic characteristics.

Finding: The proposed dwelling will have no negative effect on the farming/ranching practices that would interfere with the stability of the community's social and economic characteristics.

F. It does not interfere with traditional fish and wildlife use of habitats determined critical or sensitive in the Fish and Wildlife Habitat Protection Plan for Malheur County.

Finding: The proposed dwelling is not located in an area that contains fish or

wildlife deemed critical or sensitive, and will not interfere with traditional fish and wildlife.

G. General Criteria

1. Increasing setbacks of structures to reduce possibilities of overshadowing adjoining property, noise, odor or night lighting nuisances.

   Finding: The proposal is to build a house on this parcel. The proposed residence will not overshadow adjoining property. This criterion is met.

2. Landscaping improvements for the visual benefits of the subject site and for the improved appearance of the neighborhood and County.

   Finding: The proposed dwelling will not deteriorate the appearance of the neighborhood. This criterion is met.

3. Location and size of driveway access points and right-of-way widening and improvement for present and future traffic circulation and safety.

   Finding: The subject parcel has direct access from Foothill Dr. No new access must be obtained. A turnout must be 10' wide in addition to the 12' access road and 30' long plus 10' taper on the ends. The access road cannot have a grade steeper than 10% and must have a required vertical clearance of 13'6" (see attached letter).

4. Visual screening of outdoor waste and storage areas.

   Finding: The proposed development is for a dwelling. Outdoor waste storage will be minimal. This criterion is met.

5. Control and focusing of outdoor lighting to avoid glare being directed beyond property limits.

   Finding: Control of outdoor lighting will not be necessary.

6. Special criteria listed below, as applicable:

H. Allowance of Certain Uses: A use allowed under Section 6-3A-3 of this Title shall be approved only where it is found that the use will not:

1. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

2. Significantly increase cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. (Ord. 86, 12-7-1993)

Finding: This home will not have any impact to any current use in the area. The proposed non-resource dwelling will not force significant change in accepted farm or forest practices on surrounding lands devoted to farm use, nor significantly increase the cost of accepted farm practices.

SPECIFIC CONDITIONAL USE CRITERIA
MMC 6-6-8-1 - NONRESOURCE DWELLINGS IN EFU, ERU OR EFFU ZONES:

A. The use:

1. Is compatible with farm uses and is consistent with ORS 215.243; and

   Finding: The granting of this application will not result in loss of natural resources, and the amount of open land used for agriculture use will not change. Therefore, the proposed use is compatible with farm use.

2. Does not interfere seriously with accepted farming practices on adjacent lands; and

   Finding: The proposal is for a non-farm dwelling. Due to the location of the proposed building site and the distance to other existing developments, this will not interfere seriously with the accepted farming practices on adjacent land.

3. Does not materially alter the stability of the overall land use pattern of the area; and

Added by OAR 660-033-130(4)(a)(D) - June 1, 1998: In determining whether a proposed non-farm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new non-farm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall;

i. Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other adjacent agricultural areas. Findings shall describe the study area, its boundaries and the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or non-resource uses shall not be included in the study area.

ii. Identify within the study area the broad types of farm uses (irrigated or non-irrigated crops, pasture or grazing lands), the number, location and type of existing dwellings

(farm, non-farm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of non-farm / lot-of-record dwellings that could be approved under subsections (3)(a), (3)(d) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993, and the parcels larger than the minimum lot size that may be divided to create new parcels for non-farm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible non-farm dwellings under this subparagraph:

iii. Determine whether approval of the proposed non-farm / lot-of-record dwellings together with existing non-farm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential non-farm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.

4. Is situated on generally unsuitable land for the production of farm crops or livestock considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of tract.

B. As a condition of approval, the owner is required to allow the following statement to be entered into the chain of title for the non-farm parcel: (the use of a straw-man may be necessary):

"The property herein described is situated in or near a resource (farm or ranch) zone, where the intent is to encourage agricultural use and minimize conflicts with non-resource uses. Non-resource residents may be subjected to common, customary and accepted farm and ranch practices that are conducted in accordance with federal and state laws but ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees, by the recording of this statement, and in return for allowing a non-resource dwelling on this property, hereby accept the potential impacts of accepted farm and ranch practices as normal and necessary and part of the risk of establishing a dwelling in this area, and grantee acknowledges the need to avoid activities that conflict with nearby resource uses." Evidence shall be provided showing the lot or parcel upon which the dwelling is proposed to be located has been disqualified for valuation at true cash value for farm use under ORS 308.113.

Finding: The non-resource dwelling will be located on land that has not been farmed due to the lack of water rights.

OTHER FINDINGS OF FACT

The applicant has submitted additional findings of fact in the conditional use application.

CONDITIONS OF APPROVAL

1. The following statement must be entered into the chain of title for the new non-farm dwelling parcel: (Subject parcel is tax lot #400, Section 10, T18S, R46E, Assessor's map 18S46E10. Malheur County Reference #6667).

   "The property herein described is situated in or near a resource (farm or ranch) zone, where the intent is to encourage agricultural use and minimize conflicts with non-resource uses. Non-resource residents may be subjected to common, customary and accepted farm and ranch practices that are conducted in accordance with federal and state laws but ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns and lessees, by the recording of this statement, and in return for allowing a non-resource dwelling on this property, hereby accept the potential impacts of accepted farm and ranch practices as normal and necessary and part of the risk of establishing a dwelling in this area, and grantee acknowledges the need to avoid activities that conflict with nearby resource uses."

2. Adequate firebreaks shall be constructed and maintained to minimize danger from potential wildfire.

3. Access road shall follow International Fire Code and is subject to Ontario Fire Department and Ontario Rural Road District's written approval.

4. This approval is valid for four years from the date of this order. Substantial action must be taken within this time period or the approval will lapse.

EXHIBITS

Exhibit 1: Conditional Use Permit Application
Exhibit 2: Letter from Owyhee Irrigation District
Exhibit 3: Letter from Ontario Rural Fire Department

CONCLUSION

Based upon the foregoing finding of fact, the Malheur County Planning Commission makes the following conclusion and decision:

Substantial evidence exists in the record to support the conclusion that the application meets the general and specific criteria established in the Malheur County Code and Oregon Revised Statutes for a non-farm dwelling in an exclusive farm use zone.

ORDER

This application for a conditional use permit for a non-farm dwelling is approved.

APPEALS

The appellate body for appeals from the final decision of the Planning Commission is the County Court. To file an appeal an appellant must file a completed notice of appeal on a form prescribed by the Planning Department with a $200.00 appeal fee with the Planning Department not later than 5:00pm on the tenth day following the mailing of written notice of the decision. Notice of appeals may not be received by fax or email. The notice must include a statement raising any issue relied upon for the appeal with sufficient specificity to afford the County Court an adequate opportunity to respond to and resolve each issue. All appeals from the Planning Commission's final decision shall be based on the record of the hearing made before the Commission. Therefore, no additional information or testimony not included in the record of the hearing before the Planning Commission may be brought before the appellate body. The appellant must pay for the transcription of the hearing appealed from and submit the transcript to the Planning Department within ten (10) days after the date of notice of appeal is filed or ten days after the hearing tape is mailed or given to the appellant, whichever is later.

Kathy Clarich _____ 10-27-2022

Planning Commission Chair — Date

Kathy Clarich