

Malheur County Planning Commission
May 26th, 2022

Malheur County Planning Commission

The Malheur County Planning Commission Meeting was held remotely, via GoToMeeting, and in person, on May 26th, 2022. Kathy Clarich called the meeting to order at 7:40 p.m.

MALHEUR COUNTY COMMISSION MEMBERS PRESENT:

Kathy Clarich
Ed Anthony
Clark Forsyth
Robert Quick
Rob Kindschy

PLANNING DEPARTMENT STAFF MEMBERS:

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

NEW BUSINESS

Applicant: Wes White
2257 Hwy 201
Nyssa, OR 97913

Owner of Record: Eric White
2257 Hwy 201
Nyssa, OR 97913

Conditional Use approval for two non-farm dwellings and two non-farm partitions (a 1.78 acres parcel and 17.30 acres parcel).

Kathy Clarich – Now is the time to hear the request for a conditional use permit for two non-farm dwellings and two non-farm partitions in Exclusive Farm Use zone for applicant Eric & Jennifer White Planning department file 2022-04-013.

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.

Malheur County Planning Commission
May 26th, 2022

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

MCC 6-3A-3 Allowance of Certain Uses

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

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 Planning Department file # 2022-04-013 for the applicant Wes White and owner is Eric White, at 2257 Hwy 201, Nyssa Oregon 97913. The proposed action is for a Conditional Use approval for two non-farm dwellings and two non-farm partitions. The proposed partition size will be 1.78 acres parcel and a 17.30 acres parcel. The Tax Lot 1000 on Assessor's Map 21S46E12; Malheur County Reference #10577. The property is past Bergman Rd all the way down to Snake River. The property is located Southwest of the intersection of Berman Rd and Beaumont Rd, in Nyssa OR. Exclusive Farm Use (C-A1). The parcel is 107.48 acres. The property is currently being farmed (row crops). The parcel is surrounded in entirety by farmland. Each of the proposed non-farm partitions will have separate access to Beaumont Rd. A DEQ approved sanitation system would be required for each proposed non-farm dwelling site. The sites of the proposed non-farm partitions are within Adrian Rural Fire Protection District. No natural hazards. The proposed partitions will be tangible to the Snake River floodplain. The property has 70.75 acres of water rights. There are no water rights on the site of the proposed non-farm partitions. The soils on the parent parcel are predominately class III and VIII and small portion of class II. The site of the smaller proposed partition, identified on the proposed plat as Parcel #2 is predominately covered in soils of class VIII and the site of the larger proposed partition, identified on the proposed plat as Parcel #3 is covered by a mix of soils of class III and VIII. There is no known zoning history.

Applicant Testimony: Presented by Derrick McKrola, applicant's surveyor, 3811 Birch Rd, Vale, OR 97918

Derrick McKrola – This is what the plan is, is to create 2 non-farm parcels, and 2 non-farm dwellings. The larger one sits pretty high on a hill, and the other sits right down here not too far off from existing residence here. Like Tatiana mentioned there is just a sliver of flood elevation concern, but on the exhibits I have given you on the site maps. I indicated the top (Inaudible, coughing in back ground) and this is just like a bearing. I don't know how accurate this is near the flood plain and the purposed house here for that front parcel, the smaller one which sits just right off the road. The other one will sit up here. The other (Inaudible) has it Beaumont Road. It is not correct. It turns right here at this residence. We have reached out to all the agencies. The Road Department, Fire Department, and they didn't give us any feedback. There is a condition, a standard condition. The Irrigation District did not have any concerns about the use of this existing road. We got to install a box culvert for the drive way through this. It crosses the canal. It's pretty straight forward. This is all non-irrigated. This had been irrigated from some reason from this other owner, but there are no water rights on that. It has been taken off. I think that is all my comments for now. Anything you guys want to add? Eric or Wes?

Eric White – These are not being partition for any means to be sold off. If they are sold it will be one of my kids, and stay in the family. I grew up in the area and farmed there over 30 years. Kids interested in the farm and the housing industry they showed interest to build a house down there. That is the whole reason we are doing this.

Malheur County Planning Commission
May 26th, 2022

Tatiana Burgess – Mr. White, can I please have you state your name for the record?

Eric White – Eric White.

Tatiana Burgess – Thank you.

Kathy Clarich – Okay, so you're gonna go in on the ditch bank road? Is that what you're saying then? Is it a ditch bank road that you're gonna come in on?

Derrick McKrola – No, this is the public road right here, Beaumont Road.

Eric Evans – It terminates at the dotted line, right.

Derrick McKrola – Like I said, the Irrigation District doesn't have any concerns about using that road.

Eric White – The lateral which is line 3, runs down here spills into the river there. This is the access road up to it. Our crossing is roughly right in here. So, we can either come up this road, use a little bit of the lateral road. Or, we can also, if need to, develop our own road up over the back.

Clark Forsyth – There's options there.

Eric White – Yeah, there are a lot of options.

Kathy Clarich – That was the reason I had that question, because, for years Owyhee, I am assuming Owyhee. You have to go straight over it, they don't want you running down that road, down the ditch bank road. They want it straight over, so that's why I was asking if that's what the plan was suppose to be.

Eric White – They kind of wondered what was going on to. Honestly, I am on the Board of Directors of Owyhee Irrigation District. So.

Kathy Clarich – Yeah, well.

Eric White – There's options there.

Derrick McKrola – They also have the approval to install that crossing form the canal there, from that road. The bigger parcel.

Eric White – Fortunately, the bank on that is kind of a raised canal, the lateral, but the bank is very wide at that point.

Kathy Clarich – Yeah, we have dealt with it up above us, and they won't let us. They said they don't allow to do it. That is why I was questioning it. They said just straight across.

Eric White – No, we have gone through that quite a bit.

Kathy Clarich – Okay, anybody else have any questions for them?

Malheur County Planning Commission
May 26th, 2022

Rob Kindschy – I have a question for, Eric. I thought you had to have 2 acres to split it?

Eric Evans – 2 acres is the minimal parcel size for Rural Residential. If you remember Nagaki's Farm. We had that conversation with Stephanie, and we went and researched it. For non-farm dwellings and non-farm partitions you have to have the minimal necessary for that use.

Rob Kindschy – Okay.

Eric Evans -Is what the statutes says. We were doing it 2 acres for a little while. Even before me I think. Then the statutes are actually specific to Rural Residential.

Rob Kindschy – Okay, I just wanted to make sure it was alright. So, we didn't get in trouble.

Eric Evans – What we are looking for is the minimal use necessary. Or, we are looking at the use providing a well, septic, and replacement of home site.

Rob Kindschy – And, there is enough to do that on that parcel?

Eric Evans – There is plenty. If you have an acre you can put a replacement. I mean an acre is probably the minimum. Sometimes, you get in some place depending on what is on it. I mean if half the acre is a cliff that might be a problem. Typically, 1.7 to 2 acres you can put more then enough room.

Clark Forsyth – Is (Inaudible, coughing in background) for septic system if one fails?

Eric Evans – Yeah, for development purposes DEQ requires the initial and place to repair it in order to develop a property. You designate that area and that area is ag replacement, so there is no development over the top of it either. Unless, you designate another area later.

Kathy Clarich – Anybody else have any other questions? If not, I'll ask is there anybody here in favor of this action?

Eric Evans – Bob, you can still hear us, right?

Tatiana Burgess – He is muted.

Bob Quick – Yep, I hear ya.

Eric Evans – Alright, good. I just wanted to make sure.

Kathy Clarich – There's nobody here for it. Is there anyone here in the opposition of this motion? If not then I am going to close it to the public.

No Proponent Testimony.

No Opponent Testimony.

Closed to Public Testimony.

Malheur County Planning Commission
May 26th, 2022

Kathy Clarich – What do you guys think?

Tatiana Burgess – The only thing I want to point out is that, like Derrick said, we did not get a letter from the Road Department or Fire Department. So, the proposed condition of approval number 2. We just went with the standards that we have been that we have been provided before. Those have not been generated to us by either one of these departments. I just wanted to make sure that is addressed.

Clark Forsyth – Isn't that a condition of approval?

Tatiana Burgess – It is a condition of approval. Those figures from that condition came from previous standards that have been provided to us from these departments.

Eric White – I talked to Wes Allison he actually confronted me about it and said he was going to write a letter to you. Saying he didn't have any problems with it, but they have been doing a big paving project since then.

Tatiana Burges – So, I never got anything.

Eric White – I can also talk to the Fire Chief if you need the letter.

Eric Evans – We have some pretty general ideas, but we typically like to hear comments from them, but we can do it from the standards they have provided us before.

Tatiana Burgess -Which, that's what we did.

Kathy Clarich – Okay, did you do anything for...

Rob Kindschy – Do we need to put that in there? Or, is it already in there?

Kathy Clarich – It's already in there.

Tatiana Burgess – It's in there.

Kathy Clarich – Do we need anything for the Irrigation company's requirement for the canal?

Eric Evans – For the crossing.

Clark Forsyth – That is up to them.

Tatiana Burgess – We have the letter from Owyhee and they did not indicate anything about that.

Derrick McKrola – There is an existing crossing. It's drawn out ----

Kathy Clarich – ---- Okay, but it will still have to meet whatever we need for the Fire District.

Eric Evans – Yeah, so it just says the condition, is this one of the conditions? Did you put in the conditions?

Malheur County Planning Commission
May 26th, 2022

Tatiana Burgess – I did not.

Eric Evans – The condition of the purposed crossing of (Inaudible, coughing) done according to USBR and OID specification. We could probably add that in as condition of approval. It is just better to put it as a condition for the county and everything else, because that gives a little bit of a tool to be able to make sure Owyhee can get that addressed.

Kathy Clarich – So, that will be number 7?

Tatiana Burgess – Yes.

Kathy Clarich – And you have it written down?

Tatiana Burgess – Yes, I do have it on the exhibit.

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

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

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

Applicant: Michelle & Randy Oldenkamp
473 Jacobsen Gulch Rd
Ontario, OR 97914

Owner of Record: Michelle & Randy Oldenkamp
473 Jacobsen Gulch Rd
Ontario, OR 97914

The consideration of a Conditional Use Permit for a Minor Home Occupation and 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 Minor Home Occupation for the purpose of operating a cosmetology salon, Planning department file 2022-04-011 and a conditional use permit for a Home Business for the purpose of operating a wedding venue in Exclusive Farm Use zone, Planning department file 2022-04-012 for applicants Michelle and Randy Oldenkamp.

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

Malheur County Planning Commission
May 26th, 2022

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The Malheur County Code:

MCC 6-6-7 General Criteria to Evaluate Suitability

MCC 6-6-8-6 (A) Specific Conditional Use Criteria for Minor Home Occupation

MCC 6-6-8-6 (C) Specific Conditional Use Criteria for Home Business

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

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Malheur County Planning Commission
May 26th, 2022

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10. Order of Proceeding.

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

Eric Evans – So, I am kind of going to put them together a little bit, but they are two separate actions. So, we have both Planning Department File # 2022-04-011 and 2022-04-012. The applicants as you said is Randy and Michelle Oldenkamp at 473 Jacobsen Gulch Rd. They are also the owners. So, there's two purposed actions. One is a Conditional Use approval for a home business for the purpose of operating a wedding venue, and also for a minor occupation for a hair salon, cosmetology salon. This is on, both of these are on Tax Lot 200, T17S, R47E, Sec. 17B; Assessors Map 17S47E17B; Malheur County Reference #6919. From Ontario head north on Hwy 201 for 3.2 miles. Turn left onto Hyline Rd. Continue for ¼ mile and then slight left onto Jacobsen Gulch Rd. Continue for 0.9 miles. The property is SW of the intersection of Jacobsen Gulch Rd and Power Rd. Exclusive Farm Use (C-A1). The parcel is 29.52 acres. Parcel is currently being used as farmland and has a home site. There is a sloped area that is vacant and has not been farmed before. The adjacent properties are employed in farm use and range use. The smaller properties to the southwest and northeast are only used as single-family dwelling sites. Jacobsen Gulch Rd and Oak Rd. An existing DEQ permitted system has been in use for the dwelling. An Authorization Notice will be required from Malheur County Environmental Health to evaluate the system's capacity. The parcel is located within the Ontario Rural Fire Protection District. No natural hazards have been identified. The property currently has 20 irrigated acres. The proposed parking area for the venue had 1 acre of water rights, which has been transferred elsewhere on the property. The soils on the property are class III and VI. The majority of the soils of the proposed venue location are class III. The existing dwelling was built in 1973. In 2008 there was an addition constructed to the existing dwelling. There is no other known zoning history. That's all that. I kind of want to go into a little bit of stuff that I wanted to bring to your attention. So, it was kind of after the fact, after we did this Staff Report, that we were talking to Stephanie about this specifically. When I initially, we have had a lot of questions recently about wedding venues, and how to go about wedding venues. I actually put a question out to AOC PD months ago about this. It's consistent in most of all the other counties, maybe all the counties that home occupation, or home business, is how they do wedding venues. As a matter of fact, some counties have ordinances. Clackamas County it's actually in their ordinance. Hood River County it is actually, I mean this is home occupations to host events, Hood River County same thing Conditional Use Permit, host wedding events. They are pretty, I mean, these all went through DLCD when they, so, DLCD is kind of on board with these if they allowed these ordinances as a past. So, the one thing that I would say that we over look at least with, so this kind of took me down a rabbit hole. I did find what was directed to the home occupation statute, which we didn't actually put that as criteria, but obviously ORS does

Malheur County Planning Commission
May 26th, 2022

apply at this point in time. One thing that it took me to is that the governing body of the county or designated may allow subject to approval of the governing body to designate the establish of a home occupation and parking of vehicles in any zone. However, in an EFU Zone, Forest Zone, or mixed Farm and Forest Zone, that allows residential uses, the following standards apply to the home occupation. A. It should be operated by a resident or employee or resident of the property which the business is located. B. It shall employee at the site no more than 5 full time or part time persons. C. It shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located. I actually went out and found some case law that talks about the predominance of being located within the either the dwelling or a building that is associated with the use. There is case law that talks about specifically wedding venues, and in requiring the home operation that is conducted in substantially in a dwelling or building the legislature had in mind that attended to qualify the structures to be enclosed. Qualifying structures being closed to reduce the size impacts of home occupations. So, I mean, what that tells me is that what the legislature is trying to do, is okay, so, if you have a wedding venue and a band that we are lessening the impact on the surrounding neighbors. So, I think that is something we need to probably have some conversations about.

Ed Anthony – Can they have the wedding outside? Or does it have to be inside the building?

Eric Evans - Well, so, the statute is not clear about that. This is why I say that. So, it says predominantly in that dwelling, or in a building that is associated with the use. So, what does that mean? Does that mean I am serving the food, and the band, and the dance floor, and everything within the barn, and then the wedding, the ceremony its self is outside. I think it is reasonable. It's a reasonable interpretation of that law.

Clark Forsyth – Well, it sounds like the intent of what their after is noise. Like if you have ACDC there and have an outdoor concert that is probably not going fly.

Eric Evans – Some of these ordinances are like you know, you can do no more than 2 events a day. I mean I think that is more than what we want to see in the County. I went this direction, because the emails from the other counties, this is the direction we go. Maybe, there is something we can do about insuring that it's predominantly in a building that is associated. I don't really know much about your property, but do you guys have an out building out there?

Randy Oldenkamp – We have a 30 X 50 shop, but I don't have a barn.

Ed Anthony – So, you can use that shop for the venue?

Randy Oldenkamp – Well, our original intent was not to do that. I mean depends on what we are going to end up being governed by. The shop we intended to use to store venue supplies, decorations, tents, and chairs.

Eric Evans – So, when it comes to the hair salon, that's going to obviously be inside the building. That's a whole different deal that is going to be predominantly within the building anyways.

Michelle Oldenkamp – Are we more concerned about noise or traffic?

Eric Evans – So, the case law I was talking about the impact, but it is going to be noise. It is going to be, I am not going to say it is necessarily traffic, but when it talks about the substantially inside

Malheur County Planning Commission
May 26th, 2022

of the dwelling or building the legislature had in mind and intended that qualifying structures be enclosed in order to reduce the size impact and externalities of home occupation. So, anything that is projected to the outside. Whether, it is something the neighbor has a big deal about.

Michelle Oldenkamp – Well, our property is up on a hill. We have flat land with trees all around us. More trees than you can imagine that we have. So, as far as lights and disco balls our neighbors would never visualize any of this. We did go and talk to all our neighbors that are close by and we have told them music and cars are going to come in. We have two entrances or two exits that we could to help with traffic. Instead of going one way they have two ways. There was no concern of from any of them, of noise or the traffic part of it, or anything. They were more for it actually.

Randy Oldenkamp – I believe you all have copies of letters.

Michelle Oldenkamp – Of the letters.

Clark Forsyth – So, are we at a point in the meeting where we can ask questions of these folks?

Eric Evans – I guess I did just do my Staff Report. I apologize for that. I will end my staff report right now.

Kathy Clarich – Before you ask them questions tell us what your plans are.

Applicant Testimony: Michelle and Randy Oldenkamp, 473 Jacobsen Gulch Rd, Ontario, OR 97914

Randy Oldenkamp – I will speak to the venue. I will let Michelle speak to the salon. The venue we have envisioned an outdoor venue. We have plenty of beautiful property that we want to utilize. People we believe would enjoy using as a venue. A great place to get married. It is not just weddings. We are talking about graduation parties, class reunions, whatever, event anyone wants to have we want to host it. So, as she said we are up on a slope. Our drive way runs like this. The main driveway. We are way up here. Everyone else is down below us. We are surrounded by trees. We are surrounded by a gulch. To the I would say South side of us is farmland and plenty of it. When we went to our neighbors and told them of our idea and dream, I guess. No one had a problem with it. We told them there will probably be some live music. There will be cars going through. It's a venue, and absolutely no one had a problem with it. They were all willing to sign.

Michelle Oldenkamp – Yeah, they were really nice about it.

Randy Oldenkamp – Actually, they were very encouraging about it. They were like “good luck! Go for it!” you know whatever. We did not envision having to use a facility, a shop, or whatever.

Michelle Oldenkamp – Yeah, and we aren't talking about an ACDC, I mean, it is up to the people too what kind of music they want. I'm thinking several guitars come out. I am happy with that.

Randy Oldenkamp – We are talking DJs and dancing music, whatever.

Clark Forsyth – I think that was referring to the difference like 50 people to 1500 people.

Michelle Oldenkamp – Oh no.

Malheur County Planning Commission
May 26th, 2022

Randy Oldenkamp – As we stated in our proposal we are going to max this thing out at 250 total attendance.

Michelle Oldenkamp – There is a curfew. We are not going to do it until 2 am.

Randy Oldenkamp – If everyone drove their own vehicle out there, and there are 250 cars up there, okay, but that's not going to happen either. I mean that is our vision. We have been dreaming about this. This is actually one of the reasons we bought this property 2 years. This is what we envisioned doing. We wanted to have our own business. Its kind of just been our dream. We already applied for an LLC and got it. We are ready to go. We are trying to be proactive. We are just waiting for somebody to tell us yay or nay.

Rob Kindschy – Your kind of envisioning that you know having big tents and all that.

Randy Oldenkamp – Correct.

Rob Kindschy – I think in this area that makes perfect sense. You have fairly large acreage for this kind of stuff. A lot of the things we deal with coming out of this stage, we are looking at smaller acreages, and your neighbors.

Randy Oldenkamp – That is what is indicated in the records. 20 acres of our land is ag land. We are not going to encroach on that.

Michelle Oldenkamp – Going around on talking about this, I mean, we moved here 2 years ago, and you know going around to the banks and paperwork, and everywhere. This is what we are doing. We are doing a wedding venue. As far as I know and what I have been told. There is nothing around here like that.

Clark Forsyth – Very few. A few more have come up. I mean you are right the area does not have anything.

Eric Evans – I will concur, I mean, this type of things I do see the need for it in the county. Like you say more and more.

Michelle Oldenkamp – Well, this is the last. No more after this. I am joining this committee.

Randy Oldenkamp – Also, I wanted to introduce into the record some photographs which were required. I guess the photographs weren't necessarily required, but the Road Department asked us to replace the culvert pipe on one of the entrances off of Oak Rd on to our property, so that is the active and being done photo, and there is the completed project. The Fire Department for the salon part of this. We have proof we did all that. They also wanted pictures, or wanted me to be able to show the entrance to our property is well marked. So, that is shot from each side.

Clark Forsyth – Who did you buy that from?

Randy Oldenkamp – Gillium.

Clark Forsyth – Okay, I know exactly what property it is.

Malheur County Planning Commission
May 26th, 2022

Eric Evans – I know that they had at least a graduation out there.

Clark Forsyth – Oh, yeah, I know exactly. That is a beautiful spot. Gorgeous.

Randy Oldenkamp – We love it.

Clark Forsyth – I live about a mile from that.

Kathy Clarich – They didn't come over and ask you?

Clark Forsyth – I can see their place if I am standing on my roof top and look over the hill.

Randy Oldenkamp – My only question, is that we had no statute in Malheur County?

Discussion about statute continues.

Clark Forsyth – I don't have a problem with it.

Kathy Clarich – I don't have a problem with it. It is just does it have to be inside?

Clark Forsyth – That's my thing.

Eric Evans – Maybe, if you guys wanted to beef up the conditions at least with noise and times and stuff, and lessen any of those externalities.

Ed Anthony – So, like what set a curfew at midnight?

Eric Evans – Well, they have in their...

Kathy Clarich – ...at 10 o'clock.

Tatiana Burgess – 10 o'clock is in the county code.

Eric Evans – What is their conditions? Maybe, we do some kind of performance standard.

Michelle Oldenkamp – Well, we don't want to play music you know off of a stereo system or the band after 10.

Randy Oldenkamp – I have a Hispanic group of people who live right by me. Every Friday and Saturday night they play music until midnight. Usually, they play until 1 or 2. I went and talked to the landlord. I said midnight is fine. That is one of the reasons we went around to the neighbors, because we wanted to make sure the police are not showing up at somebody's wedding going "Hey, turn it down." You know what I mean?

Bob Quick – I just wanted to interject as the only photographer in the whole group. I am photographing wedding venues on people's farms. In their pastures. In their alfalfa fields. In their barns, all over. This is a marvelous idea if they have a park like setting, or what they are describing. There is tremendous need, and really our statute doesn't really cover what they can do in their

Malheur County Planning Commission
May 26th, 2022

yard, and that is really what they're proposing to me I'm hearing. Is what they can do with their pretty property in the acreage that they have. They not talking about housing people or putting large venues inside of buildings. They are looking at offering a piece of property that is pretty. That people can have a party at for whatever reason. So, I know there are a lot of properties around here that are doing without a permit, and without permission right now all the time. Just an FYI.

Eric Evans – I do, I mean, a little distinction in my mind just to clarify things. Is though I have a farm and my kids getting married everybody has the absolutely right to have a party for private use. The distinguish I would make to this is more we are talking about a commercial. This is a commercial business use. So, although, yes, I totally agree with everything Bob said. There is a distinguish we need to make sure that we keep in mind, because you know I do think we have to be thoughtful about this and for the people. Make sure that we are going the right direction with the county.

Clark Forsyth – Well, I think we are. They got a plan that is well laid out.

Rob Kindschy – Are they basically saying they have to put through the minor home occupation deal, or is there another way to go about it?

Eric Evans – So, there is some other case law out there. So, this is the first thing. There has been a push over the years for venue type of things on EFU. So, the legislature has gotten specific cases in there. Like wineries and things that are associated with wineries. There is some stuff about Agritourism out there too. If they wanted to do something that was farmed to fork. Agritourism is still a condition use, but it has different criteria. In the past they have tried to do a private park as a wedding venue, and there is case law that says that is unlawful. So, as of right now what the tool that we have seen other counties use is this.

Randy Oldenkamp – We are trying to do this the right way.

Eric Evans – I appreciate that. I just have to provide the information that I have to these guys.

Randy Oldenkamp – Yeah, we could have parties up there and whatever, but we wanted...

Rob Kindschy - ...as long as he said he has one grape vine instead he has a winery and be better off.

Eric Evans – That might be the case. We don't have wineries here, so I can guarantee I am not an expert in the rules with wineries. I know they exist.

Rob Kindschy – It is an ag deal so they are going to be exempt from that.

Eric Evans – There is a possibility do an Agritourism, well, a good example is what I would say is a good Agritourism is, is Montgomery Farms. Where they have a bunch of weird different events, but they are doing it with associated with corn fields, and stuff like that.

Kathy Clarich - What does it have to do with the paintball, because that is a real pain in my...I mean it's clear over on our property.

Eric Evans – I don't know how that ever happened. I have never looked into it.

Malheur County Planning Commission
May 26th, 2022

Kathy Clarich – There is so much trash that floats down the river when it floods.

Ed Anthony – That is everywhere. That is not just paintball.

Kathy Clarich – Oh, no this is their paintball stuff.

Ed Anthony – Yeah, but there is just so much trash floating down the river.

Eric Evans – That is just an example of having paintball, corn maze, the pumpkin patch, and the little games that are played that are kind of sort of agriculture. I think that is Agritourism right there. It is really tough to really place this type. There is really no way it fits definition of statute. I mean in reality of home occupation, a home business.

Kathy Clarich – I have a question though. I see you have one acre of parking. Realistically, how many cars do you have up there?

Eric Evans – Hold on one second.

Michelle Oldenkamp – When he googled.

Eric Evans – Can we take a time out for one second?

Connection lost.

Michelle Oldenkamp – We also have a big huge parking drive up. We have parking behind there. We have so much land out there.

Kathy Clarich – This is what I was talking about.

Michelle Oldenkamp – But, right here.

Back ground talking. (too many talking, inaudible)

Eric Evans – Bob, are you there?

Tatiana Burgess – You guys can resume.

Kathy Clarich – Bob, we were just talking about parking. They googled it or whatever. They say 242 in one acre of ground.

Clark Forsyth – Realistically, we are probably talking 150-170.

Michelle Oldenkamp – People are always going to drive together.

Randy Oldenkamp – As far as the salon side of things go. It's appointment only... (Inaudible, people talking over)

Malheur County Planning Commission
May 26th, 2022

Kathy Clarich – Well, that will be parked by house, you know. I don't have a problem with the salon.

Ed Anthony – I don't have a problem with the venue. We should we get in the conditions.

Clark Forsyth – The nice thing though is they don't give the definition of the building there. So, if you attempt.

Michelle Oldenkamp – I mean later on down the road you build it they will come. You build it you will make money. That money will go right back into your business. Our future plans are to build a platform, which we are doing first. You know little something to protect the people from weather. I mean believe me we are doing everything we can to build this thing.

Rob Kindschy – So, I had a question is that a permanent structure? Or can a tent be classified as a structure?

Eric Evans – It has to be a permanent structure.

Tatiana Burgess – A structure that is approved within that zone.

Kathy Clarich – Can it be an open structure?

Eric Evans – No. This is what this case law is talking about, is in this particular case. When you look at a case law sometimes not all it is kind of apples and oranges. In this particular one it was talking about a gazebo and a pavilion, and whether that met the definition of that being substantially in a dwelling or building, and no it did not. The structure has to be enclosed in order to reduce the size impact and externalities of home occupations.

Kathy Clarich – But, enclosed like a tent?

Michelle Oldenkamp – Are other things around this area are they enclosed in shops?

Rob Kindschy – Yeah, but here is the thing they aren't going to say anything about wedding outside. It is just the band and noise afterwards.

Eric Evans – It's the externalities that you are projecting.

Randy Oldenkamp – I just want to make sure we get it passed where we aren't going to get you in trouble or us in trouble.

Eric Evans – I think we should be thoughtful about it, by all means, and take everything in consideration. The possibility of ramping up our conditions to help alleviate some of the externalities I think is a possibility to do here.

Kathy Clarich – Does Stephanie have anything to add?

Eric Evans – I doubt. Stephanie, do you have anything to add?

Kathy Clarich – I thought maybe she would have other...

Malheur County Planning Commission
May 26th, 2022

Eric Evans – Her and I talked about it a decent amount this week, and everything I have said is what we talked about.

Ed Anthony – I think we should allow them to do it.

Clark Forsyth – I am in favor of it.

Ed Anthony – I don't know how to word it, so we aren't going to be, I mean let them have an outside venue with lights. That is my opinion.

Rob Kindschy – I would be in favor for that.

Kathy Clarich – At this point does anybody have any more questions for them? Is there anybody here that is in favor of this action? Are you opposed to it?

Proponent Testimony: Marlene Boucher, 16908 New Colony Ave, Caldwell, ID 83607

Marlene Boucher – I am the mother in law, the mother. I have watched this for the last couple of years. It is breathtaking what they're trying to accomplish. I think that with this it will be an addition to Ontario. You know it is just drop dead gorgeous. I am just hoping that is a successful, and I just can't imagine anybody appealing it. Now or in the future, but you never know.

Connection problems. Eric catching Stephanie and Bob up
No Opponent Testimony.

Eric Evans – Stephanie, do you have anything you would like to add? What we were talking about Stephanie.

Stephanie Williams – Don't want to be the downer here. I realize that you know that this is needed. I understand what you are saying. I just think we need to make some findings about that it is not going to be predominantly in the dwelling. I mean our limits requires it be predominantly in the dwelling. I think you could make a finding about the structure that, to the extent, if possible they are going to use temporary canopies and structures. Maybe, a pole barn. Maybe, an enclosed porch. I have been there. I have been there when the Gillum's lived there. I think it is an absolutely stunning, beautiful place. I think maybe we should make some of those findings that actually solidify the language and the ordinance in the legislative intent. I am just wondering how we are doing it for the next person who applies. Not worried about this particular land use action. I am not worried about the setting. I am not worried about this applicant. I think we could put some conditions in there about no amplified noise, the curfew. I really do think our code says 10 PM, not midnight. I think you just need to make some findings that they are going to use temporary structures. That you feel comply with the Malheur County Code and statute.

Bob Quick – Stephanie, you mentioned amplified music. All of the music is amplified. I don't think we have anything to do with ordinances, but it has to be a DB level, doesn't it?

Stephanie Williams – Well, the county doesn't have one. We don't have a decibel level.

Malheur County Planning Commission
May 26th, 2022

Eric Evans – It is pretty vague. It says noise should be kept to a minimum at all times. That's the decibel level in our county code. It is pretty subjective.

Stephanie Williams – Usually, what we tell people especially with the rodeos, some people have rodeos on their private property, we give temporary permits. If it is disturbing your neighbors and the police go and tell them to turn it down and they don't. We fine them under the ORS for disorderly, because we don't have a decibel level in our ordinance.

Kathy Clarich – So, if we put it in something like temporary canopies or something do we need to give them a date to get something else, or just leave it has temporary canopies?

Eric Evans – I think the point is that the fine use is going to basically this commission this planning commission believes that by using temporary structures it meets the ORS as it meets with the ORS is attending to meet. That is going to be our finding. I mean that helps solidify what our findings are.

Stephanie Williams – We need to recognize that there is an out building on the property. I think that would make me feel a little better. You know Gillium's had Colton's graduation in the pole barn. You know again we are making findings so that we can apply them to the next person who applies. We don't really use force. I just think we need to make in good faith.

Eric Evans – That is one thing, Stephanie, when we were kind of limbo and you couldn't hear us. That I was saying we need to really make sure that we are looking at this and this is the direction we want to go with the county, and for any other applicants later.

Stephanie Williams – Right, that is my concern. Not necessarily this application, but how we are going to go forward with other applications, who may not have out buildings.

Clark Forsyth – So, Stephanie, for my own clarification. So, looking at something like Gerulf's. That puts it in a different category, because they have the actually building?

Stephanie Williams – Yeah, and they actually have kitchen facilities. They have restrooms inside. I went to that little wedding there. The wedding part was outside. People can mingle outside, but a whole lot was outside.

Eric Evans – Yeah, in our discussion too, is that there is distinguish between both of those places.

Clark Forsyth – I have another question for these folks. So, as time goes down the road do you envision what we are talking about? Like a barn type setting. Restrooms. Flush toilets. As that kind of goes down. I think in my mind. So, if you had a venue there tomorrow you are kind of stuck there with porta potties and tents.

Rodney Oldenkamp – Pavilion tents.

Clark Forsyth – I still don't have a problem with it, but I think it needs to be stated like you are saying.

Malheur County Planning Commission
May 26th, 2022

Eric Evans – Yeah, just solidify. We can do a couple of things. We could close the hearing and everything and I can bring something to you guys next time. Because, I am not sure if we will have the best findings drafted by tonight. Unless, you guys want to hatch out those.

Stephanie Williams – I also want to address the signage. I am not sure if the signage complies. I think minor home occupations it meets it, but not for home business. I think it has to comply with Chapter 7. I think you need to look at the signage a little bit too. The finding of the Staff Report is for minor home occupation. Like the salon. It doesn't apply the signage for the venue. For the home business. You need to look at the Malheur County Code and not Staff Report. It says to comply with Chapter 7.

Tatiana Burgess – So, Stephanie, in Chapter 7 it said that within those guidelines they can have signs of type 1, 2, 3, or 4. Their proposal said it was going to be 12 ft sq sign. Which was in the guidelines of type 1, 2, 3, or 4.

Stephanie Williams - Let me pull it up here for a second, hang on. Well, I mean if you look at the Staff Report. The Staff Report says the criteria is that there can't be any signs advertising.

Rob Kindschy – So, they can't have a sign that says wedding venue or Joe Smith's wedding Venue? Is that what it is saying?

Eric Evans – According to the criteria for a Conditional Use Permit for...

Stephanie Williams – 6-6-8-6-7, signs, notwithstanding Chapter 7 of this title. There should be no signs advertising or identifying the minor home occupation. This is not a home minor occupation. This is a home business. I don't know what the criteria is, but I think it needs to comply with Chapter 7.

Eric Evans – So, under Chapter, so we are calling this a home business. If you go 6-6-8-6 C 7, it says signs, a home business must comply with Chapter 7 of this title. That's all it says.

Stephanie Williams – Okay, right. The Staff Report is wrong. That's all I am saying.

Eric Evans – No, you are right.

Stephanie Williams – It needs to comply with Chapter 7 I guess.

Eric Evans – With Chapter 7, I think what we're talking about is 7 D. So, calling it a type 4 sign. Signs not exceeding 12 sq ft in area. Directing vehicle traffic to places of interests, which would other wise be difficult to find. Or, directing vehicle traffic as to avoid traffic safety problems. I think that is where it was kind of put under.

Rodney Oldenkamp – Well, here is my next question (Inaudible)

Stephanie Williams – It might have been a cut and paste thing, because I think for minor home occupation the salon is different then the sign allowed for the venue.

Eric Evans – No, you are right. I think it was just that the signage thing was wrong in the Staff Report.

Malheur County Planning Commission
May 26th, 2022

Ed Anthony – So, are we going to table this with finding and facts and stuff?

Eric Evans – Stephanie, do you think that is the best thing? Do you think if we table this, I mean, we can close the hearing and then table it, and then come back next month? In order for them to approve the findings that we kind of ramp up a little bit about temporary structures. I just don't know if we can have that done tonight. Does that sound fair?

Stephanie Williams – Yeah, we can certainly do that.

Ed Anthony – Can we pass the salon tonight?

Eric Evans – I think so.

Stephanie Williams – Yeah.

Ed Anthony – And just table the venue until you get everything we need to iron out.

Rodney Oldenkamp – So, what is the proposal here?

Eric Evans – I guess, you know, the other option would be to, for you guys to pass it with the new conditions as proposed, and maybe designate Kathy to finalize that when she signs it. To give the final okay.

Ed Anthony – Either way it is fine with me.

Clark Forsyth – Goes to Kathy. Just so you folks are clear with what, this isn't, because it is new in our county we got to make sure we got it right going forward. It's not really on you guys.

Rodney Oldenkamp – No, we understand that.

Eric Evans – To be honest it is kind of new in the state anyways. I couldn't come up with anything where that this is really, truly been tried, or appealed anyways. Besides, the enclosure piece of this isn't really, truly a minor home business. I don't know, I guess, there might be an argument to say it is not. That's the tool we have in front of us, and that is the tool I recommend to use for this type of application.

Clark Forsyth – So, I am in favor of approving it as discussed with the new things and stuff.

Kathy Clarich – Then I am going to public testimony.

Closed to Public Testimony.

Kathy Clarich – And, discuss with all of you guys want to put in the conditions, so that I know when I go into sign.

Eric Evans – I think everything was discussed. I took some really quick notes, Stephanie. So, findings to solidify the criteria. Things like the temporary structures where we think it meets those gaps that we talked about. We could potentially ramp up the conditions too to address the noise.

Malheur County Planning Commission
May 26th, 2022

But, we didn't really discuss any specifics to what you guys think. Noise could be an issue. I mean, really times.

Kathy Clarich – I was going to say we already have pretty much in the county ordinance for 10 o'clock, right?

Clark Forsyth – That just blows me away.

Rodney Oldenkamp – That's what we put in our application.

Kathy Clarich – That's what I said. We want to have that.

Eric Evans – So, I mean that is it. Really, you guys can discuss. Maybe, you guys can think something else to ramp up the conditions. The last one is the fact to recognize, Stephanie wanted to put something in there, to recognize that there are out buildings on the property. I think that will probably be in that finding that is talking about temporary structures and everything else.

Rod Kindschy – And, you have that all wrote down in your notes?

Eric Evans – Yes. It is on the record too. I will probably as we go and listen to what Stephanie is saying. To just make sure I covered everything.

Rodney Oldenkamp – May I ask a question? Or are we done?

Kathy Clarich – You can go ahead and ask.

Rodney Oldenkamp – The sing thing I just want to be clear, as to wondering what we're talking about on the signage? One versus the other.

Michelle Oldenkamp – Our plan was just put, because we are calling ourselves, Old Bend Acres. Wedding venue, dot, Graduation, dot, Salon, dot. You know how those signs dot, dot, dot. Whatever is on there. Just something small, simple, nothing fancy.

Eric Evans – As long as it is less 12 sq ft.

Tatiana Burgess – But, it can't say anything about the salon.

Michelle Oldenkamp – You mean I cannot put dot salon on there?

Tatiana Burgess – That is what Stephanie was saying.

Rodney Oldenkamp – That's what I was trying to clear up.

Tatiana Burgess – The minor home occupation cannot be identified with signs.

Eric Evans – The minor home occupations have specifically excluded the use of sings. Businesses it has to comply with this other chapter, and that is what she was saying. Our Staff Report did not reflect that.

Malheur County Planning Commission
May 26th, 2022

Rodney Oldenkamp – For clarification we can have a 3ft by 4 ft sign advertising our venue?

Eric Evans – Yes.

Rodney Oldenkamp – Okay, I am done asking questions.

Stephanie Williams – You know for the minor home occupation for advertising. I think the name of the salon. As long it doesn't have a phone number, or something that says make appointments now, or best hair cut in town. You know I think that there is some wiggle room in there.

Michelle Oldenkamp – The only thing I wanted to put on, because I do vinyl too. It will say Old Bend Acres wedding venue. You know it will have like, I don't even have to put for appointments. You know I just want to put in little lettering Salon available, or whatever, whatever, dot, graduation, dot, birthday parties, dot, you know whatever. Just in little letters I can just put salon available.

Eric Evans – So, that is what my point was going to be is that, you know when the salon is in conjunction with the wedding venue, then, I don't think anybody is going to sit there and police that.

Michelle Oldenkamp – Yea, I am not going to put in big letters, I don't want to advertise myself. So, that is okay I put salon in little letters under the Old Bend, the venue is going to be big. That is what we want to capitalized on.

Rodney Oldenkamp – And, we are allowed one of those signs somewhere on the property, correct?

Eric Evans – Yes, I believe that is what it says.

Rodney Oldenkamp – We can't have one on the Oak Rd side, and one on the Jacobsen Gulch Rd side? Only one?

Eric Evans – It has to be on the property.

Michelle Oldenkamp – So, we can put two and two, okay.

Eric Evans – It has to be 10 ft from property line.

Rodney Oldenkamp – No problem. Thank you.

Rob Kindschy – So, what kind of motions are we going to make here people? Let's do the salon first.

Ed Anthony made a motion to accept Staff Report and the findings of facts. Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present.

Ed Anthony made a motion to approve Conditional Use for minor home occupation for a salon. Rob Kindschy seconded the motion which was unanimously approved by the Commissioners present.

Ed Anthony made a motion to designate Kathy to approve the final findings. Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present.

Ed Anthony – That one is done.

Eric Evans – I think with this one, I think the findings we have talked about is for us to fix the finding of the sign. I think that is wrong. And, then, to fix the sign finding and all the other findings as discussed.

Ed Anthony made a motion to accept Staff Report and to fix the sign finding, and all other conditions as discussed. Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present.

Ed Anthony made a motion to approve a minor home business. Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present.

Ed Anthony made a motion to designate Kathy to approve the final findings. Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present.

Eric Evans – So we will draft the findings. Kathy will finalize that, and then there is a 10-day appeal period.

OLD BUSINESS:


Approval of transcribed minutes from the April 28th, 2022 hearings.

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

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

Respectfully submitted, Alexis McDaniel

Minutes approved by:

Name: 
Edward Anthony, PC Vicechair

Date: 