

The Malheur County Planning Commission Meeting was held remotely, via GoToMeeting, and in person, on October 26<sup>th</sup> 2023. Kathy Clarich called the meeting to order at 7:27 p.m.

**PLANNING COMMISSIONERS PRESENT**

**Kathy Clarich  
Clark Forsyth  
John Faw  
Ed Anthony**

**Commissioners Attending via video conference**

Bob Quick

PLANNING DEPARTMENT STAFF MEMBERS:

Eric Evans, Planning Director  
Marc Berg, Planning Clerk  
Stephanie Williams, County Counsel

**NEW BUSINESS**

**Applicant:** Katherine and Gary Pozzi  
PO Box 337  
Vale, OR 97918

**Owner:** Katherine and Gary Pozzi  
1875 5<sup>th</sup> Ave West and 4267 John Day Hwy  
Vale, OR 97918

*Conditional Use Permit application for 2 non-farm dwellings and 2 non-farm partitions in an Exclusive Farm Use zone pursuant to MCC Title 6, Conditional Uses 6-6-7, 6-6-8-1, 6-6-8-2 and OAR 660, Division 33, Agricultural Lands, for tax lot 700, Section 36, T.17S, R.44E, W.M. Planning Department File #2023-09-014; Malheur Co. Ref. #13151.*

Kathy Clarich – Okay. I am going to call the October 26<sup>th</sup>, 2023 Planning Commission meeting to order. It is 7:27 pm. First thing on our agenda will be Kathy and Gary Pozzi. I will read this into the minutes.

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 applicants Kathleen and Gary Pozzi. Planning department file 2023-09-014.

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.

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.

Do any members of the County Planning Commission need to abstain, disclose conflicts, disclose biases, or disclose any ex parte communications or site visits? If so, state the reason.

***Kathy Clarich, John Faw, and Ed Anthony have all visited the site in question.***

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

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

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

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.

We're going to start with the staff report, then the applicant will have 20 minutes, then testimony in favor or opposition – will be five minutes each.

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

Eric Evans – So, this is for Planning Department File #2023-09-014 for a Conditional Use application for 2 non-farm dwellings and 2 non-farm partitions. So, it's a 109.97-acre parcel, and

they want to partition off an approximately four-acre lot, and a 1.53-acre parcel. This is tax lot 700, Township 17 South, Range is 44 East section 36. The Malheur County Reference number is 13151. It's located about 5.5 miles down... NW of our John Day highway. It's zoned (C-A1) Exclusive Farm Use. It's currently being used with some row crop. Also, there's some other residences and other residential improvements on it. It's located, surrounded primarily by farms and farming activities, with some farm dwellings in there. They will have, the proposed partitions have separate access off of Fifth Avenue West.

Obviously, they will be required to have DEQ-approved on-site wastewater treatment systems. It's within the Vale Fire and Ambulance District. There is currently 26.6 acres of water rights, which includes 0.8 acres of water rights on the site of the proposed non-current partition No. 1 that aren't currently being used. They propose to transfer those rights. Soil types on the property are predominantly class IV, with of farm ground, the actual irrigated area, being class II, and some smaller areas of class III on there. The site of both the proposed non-farm partitions are all class IV. The existing dwelling was constructed in 1967 and several residential farm improvements were added over the years. Additionally, there's an old home site to the southeast of the existing dwelling that was built prior to 1960 and has been used as labor housing. I believe it's vacant right now. They also own Tax Lot 600, which is kind of northwest of the property here. It's vacant and does not have any water rights. That's it.

Kathy Clarich – Okay. So, I do have a question. You were talking about Parcel one. On the map, we have three parcels? So, which one have they classified as parcel one? The one that's 4 acres?

Eric Evans – Can I see what you are looking at? Show me on the map. So... in the staff report, she said the partition number one would be four acres. So, on this map it would be parcel two.

Kathy Clarich – Yeah, because all the rest of this stuff has parcel three.

Eric Evans – Yes.

Kathy Clarich – So, when we are talking about it, we are still going to call this parcel one then?

Eric Evans – You guys can go by that map. Is what I would say.

Ed Anthony – Is that one or two?

Eric Evans – Parcel two is the four-acre.

Kathy Clarich – Parcel one is the main thing and parcel two is the 4-acre piece, and parcel three... It's just different in the staff report, so I wanted to make sure you knew.

Eric Evans – She didn't actually call it "parcel", she didn't relate it back to that. That was me calling it one and two.

Kathy Clarich – Just double checking here.

Eric Evans – She is calling it proposed non-farm partitions number one and two. It's different from how they say it on the map.

Kathy Clarich – Okay. Gotcha.

Eric Evans – Just step up so we can hear you. You can sit at the table. There is plenty of room.

Kathy Clarich – State your name and address for us.

**Applicant’s Testimony:**

Katherine Pozzi – My name is Kathy Pozzi. My address is 1875 Fifth Avenue West, Vale, Oregon, 97918. We are here tonight just to propose the consideration of a conditional use permit with two non-farm dwellings and two non-farm partitions. Eric stated that, these would be on, I guess what we're talking parcel two – the four acres, that there was a little bit of irrigated ground there, that's not in use. We are going to be having that water right moved to the larger parcel. The reason why we left that section in front, if you're looking in front of the house, is because that's where the septic system is for the house. So, we felt that we needed to include that land, that it shouldn't remain with the ranch, because that's just causing problems for people in the future. So, that's why we broke it off the way we did was because of the septic systems and all of that. So, you can see where the house is. That... east... right there, in front of the house. So, we've already contacted... is it Warm Springs? about an application to move that water right.

Kathy Clarich – Parcel three then, is just going to be for a house, right? There's no water right for it.

Katherine Pozzi – Correct. No water right. There is nothing that is being used up there for water or for any farm use, in the last 25 years that we have lived there.

Kathy Clarich – Okay. Anybody have any questions for them?

Clark Forsyth – It looks pretty straightforward.

John Faw – I was going to say, looks pretty simple.

Kathy Clarich – Ok. Thank you.

John Faw – All you got to do, is make sure you get the water moved.

Katherine Pozzi – Thank you.

Kathy Clarich – Ok. Now it's a chance for everybody else to speak. Is there anybody here that is in favor of this action? Is there anyone opposed to this action?

Clark Forsyth – Bob is still muted.

Eric Evans – They can unmute themselves.

**No proponent testimony.**  
**No opponent testimony.**  
**Closed to public comments.**

Kathy Clarich – Do we not have to have a minimum of two acres for a lot, anymore?

Eric Evans – No, not for non-farm. Do you remember that discussion that we had with the property, out off of the Slope and we had that discussion with that? The two-acre minimum is for Rural Residential. The requirement here is the minimum necessary to support the dwelling.

John Faw – The two acres doesn't apply? Because that was my question.

Eric Evans – Correct.

Kathy Clarich – I was thinking that at one time...

Ed Anthony – Always was two acres.

Kathy Clarich – ...we always did two acres. I think that was because of having to change septic, so somebody doesn't have to put it out in their pasture.

Eric Evans – Generally, I would say that one acre could potentially support wells and septic. But, if they come in with a site plan that says “we've got enough room for a well, an initial and a repair septic system, plus the house, and whatever out-buildings that we are going to construct...” then, that is sufficient.

Kathy Clarich – Okay. Any other questions, guys? If not, I could use a motion.

***Vice-Chairmen Ed Anthony made a motion to accept the staff report and findings of fact. Commissioner Clark Forsyth seconded the motion, which was unanimously approved by the Commissioners present.***

Kathy Clarich – Motion carried.

Ed Anthony – I'll make a motion to accept the two non-farm dwellings and two non-farm partitions...

John Faw – Should we put the stipulation to complete the move of the water right?

Eric Evans – We could. Is that not on the one that she proposed?

John Faw – I don't recall. I know that it's in the works. But that doesn't always mean that it will get completed.

Clark Forsyth – You mean, so that it is in the record?

Eric Evans – We have the farm statement, back taxes, fire access...

Kathy Clarich – The International Fire Code. You don't have anything for the moving the water?

Eric Evans – We can add that in there.

John Faw – I’d like to see that added in. Just to keep it clean.

Ed Anthony – I’ll add that in there – water right – be completed.

*Vice-Chairman Ed Anthony made a motion to accept two conditional use permits for two non-farm dwellings and two non-farm partitions with the condition to have water right transfer completed. Commissioner John Faw seconded the motion, which was unanimously approved by the Commissioners present.*

Kathy Clarich – Motion carried.

**NEW BUSINESS**

**Applicant:** Dan Fulleton  
1878 US Hwy 20  
Vale, OR 97918

**Owner:** Dan Fulleton  
3550 Fulleton Road  
Vale, OR 97918

Kathy Clarich – Okay. Next thing on our agenda is Dan Fulleton. Okay, I have to read this into the minutes again.

Now is the time to hear the request for a Conditional Use Permit for two non-farm dwellings and two non-farm partitions in an Exclusive Farm Use zone, for applicant Dan Fulleton. Planning Department File 2023-09-017.

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. 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.

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

Ed Anthony – I’ll abstain. He is my cousin. I’ll stay here, but I won’t vote.

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

Do any members of the County Planning Commission have any biases to disclose, if so, state biases.

Do any members of the County Planning Commission have any ex parte communications

including any site visits to disclose?

***Kathy Clarich, John Faw have visited the site in question.***

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

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

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:

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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.

The applicant will be allowed 20 minutes for the initial applicant presentation. Then, if he needs to, there is 10 minutes for final rebuttal. Staff report, Eric?

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

Eric Evans – This is Planning Department File #2023-09-017. It's a conditional use application for two non-farm dwellings and two non-farm partitions. Just in case, there is a map, I won't call them "parcels." One of the new parcels will be approximately 1.96 acres and will include the existing homesite. The second will be 3.68 acres and it will be adjacent to the first one (east of the driveway), which naturally separates the site from the rest of the farm ground. The driveway naturally separates it. This is tax lot 11400, in Township 18 South, Range 44 East, Section 36. Malheur County reference number 13620. Property is located approximately 3 miles southwest of Vale, on Hwy 20. It's zoned EFU – Exclusive Farm Use. The property is 81.75 acres... Ok, I need to change how I say this. The property is shown to be 81.75 acres on the last recorded survey. However, a previously executed survey conducted in 2015 found that the property is at least 90.64 acres. And why that's

important, is because if you remember, a property has to maintain at least 80 acres. So, if they're taking 1.96 and 3.63 acres, that still keeps it above that 80-acre mark. The bottom line is, that the property size was never updated, formally. It was incorrect, that was shown on the last actual survey. It's currently being farmed. There is a residence and other residential improvements as well. It's surrounded by all farmland. The access – it will have shared access off of Hwy 20. An approach permit was originally approved in 2012 by ODOT. There are no additional new requirements for ODOT, that must be met now. Obviously, it has to have a DEQ-approved on-site wastewater treatment system. The new parcels are located within the Vale Fire and Ambulance District. Also, there is a letter attached.

Almost the entire parent parcel is within the flood plain. And the sites of both proposed non-farm partitions are located exclusively within the 100-year floodplain, as well, and therefore, they will have to meet all floodplain requirements. Not the existing one – it's probably a pre-FIRM building. The property has 74.4 acres of water rights. There are 1.8 acres of water rights on the side of the proposed non-farm partition number two, which will be approximately 3.68 acres. The soils, on the entire parent property, are class II. The existing dwelling was constructed in 1951 and several residential and farm improvements were added over the years.

In 2008, a CUP for a non-farm dwelling and a non-farm partition was approved. Although, a partition plat was never filed to formally complete the partition. In 2015, the owners initiated a process of applying for a conditional use permit for two non-farm dwellings and two non-farm partitions, but it was never completed. That's it.

Kathy Clarich – Ok. It's your turn, Dan. Tell us what your plans are.

### **Applicant's Testimony:**

Dan Fulleton – My name is Dan Fulleton. I live on 3550 Fulleton Road in Vale, Oregon. Ruth (applicant's sister watching on Zoom) is sick, so I will ruin my own presentation. As the history was told to you, we were looking at separating it off years ago. The one piece for the house, was already approved. We wanted to continue on that. That had to deal with the people that were going to take the property. All they had to do was separate it off the farm, to acquire the house. And that was Doug Kamo. Since then, he has passed away. Bonnie would have been the one to take the property and have it separated. In that stead, I purchased the property and it stays with the farm. It wasn't necessarily a purchase that had to be recorded, because it was already in my name. Because, for them to get it, they would have separated it out of the original purchase. That goes into a little bit of the history.

We would like to continue and take the property off, so I can treat the residence as a separate piece of property. With the new surveys, if we don't apply for a second piece of property, as for building, we can't revisit that later. The second site. So, we had that built in. We have had the surveys done. We will have to update the surveys. Because Leland Myers has passed away. He is the one that did it. All these things expired, but we will get those updated again, as well. And it's all been looked at. The piece of property that we want to take off, the three acres, does separate itself off away from where the ground is being farmed now. It is accessible and it is being farmed. But, it would fit in a lot better if we just moved that water right to the other property as well. Right now, I don't know what you want me to do once I... if we do get this approved, with the water right. Because, we can continue using that until we develop it further. Or, unless it's required, we take the water right off and develop it otherwise. So, that's the purpose of me coming here.

Clark Forsyth – It makes sense to me.



Kathy Clarich – Let’s see. So, are you already watering more than what you have water rights for, there? Because, you said 90 acres, but you only have...

Dan Fulleton – The river, and there is property that isn’t irrigatable. The river is part of that, as Bully Creek breaks through this property...

Kathy Clarich – Right.

Dan Fulleton – That’s included in some of this 80-acre... this 90-acre parcel.

Kathy Clarich – Okay.

Dan Fulleton – So, we’re only irrigating...

Kathy Clarich – Irrigated on what you have. So you would have to move it to a different piece of property, altogether. So, you’re in no hurry to sell this other piece? Is that what you are going to do?

Dan Fulleton – No. Because... Correct.

Kathy Clarich – Ok. Just checking it out here.

John Faw – Right. There are timeframes on all of this. Something has got to be done, unfortunately.

Dan Fulleton – Ok.

Kathy Clarich – If you go ahead and divide off, that stays divided off, right? But, as far as building, you only have ...four years?

Eric Evans – Four years.

Kathy Clarich – And then, if you don’t, you can renew it one time? For another four years?

Eric Evans – For two years.

Kathy Clarich – Two years? And then, after that, to put in a dwelling, you would have to come back to the county again.

Stephanie Williams – He wouldn’t be able to.

Ed Anthony – After 6 years?

Stephanie Williams – Yeah.

Clark Forsyth – So you have four years, and then a two-year renewal. Then, after that, it’s done if you don’t go about it.

John Faw – You can’t come back again?

Stephanie Williams – Well, as long as he creates the two non-farm partitions, he's fine.

Kathy Clarich – Yes. That's why you said, they would have to divide the two pieces of property off.

Stephanie Williams – Right, he needs to do it, and get it recorded.

Kathy Clarich – And pay your back-taxes on it.

Eric Evans – And, I'm going to warn you, up front... and Kathy could tell you more. Have you talked to them about what the back-taxes will look like?

Dan Fulleton – You know, we touched on it a few years ago.

Eric Evans – That section of the property, where the house isn't, I mean, it could be significant.

Dan Fulleton – What's significant?

Kathy Clarich – Well, you are going from farm ground, which is...

Eric Evans – I don't know what the Assessor's land classification is for that particular piece of property, but... We've had one property... a few acres, and it was a few thousand dollars. Then, that ends up being, every year, it's a few of thousand dollars of taxes in the end. Sometimes, there is a sticker shock there.

Dan Fulleton – Sure.

Eric Evans – I know of at least one place, that it was partitioned way before I was the Planning Director, and these people have never really wanted to sell it necessarily, but they did it for the same reason. because, if they wanted to divide it... they have a little bit of remorse over that second partition, because now, they're paying a couple thousand dollars a year in taxes. Where, it was a couple hundred dollars before. Just a thought.

John Faw – One thing about this one, I don't think it would affect the rest of the farm. Not the way that it is situated there.

Kathy Clarich – It just depends if you want to have the other partition or not, is what it comes down to. I understand what you are doing, because it would be on that side and it's easier just to farm where you've got the... I don't know, you have the pivot on that part there?

Dan Fulleton – Yes, I do. Right here (pointing to screen).

Kathy Clarich – It's easier just to farm that. I am assuming your road in is going to be wide enough for you farm equipment, too. And that is going to be an easement, then for this house and an easement for that house. It just depends upon if you want to pay the back taxes. Like we said, every year, it's going to be a little more. You understand that? Ok. I just like make sure that people know.

Dan Fulleton – Sure. Thank you.

Kathy Clarich – So, any more questions for him?

John Faw – I have one for Eric. Can we dry up a parcel, to make it allowed for the non-farm partition. Because this one is all “water-righted.”

Eric Evans – Right.

John Faw – Question... because I’m not sure. We have done some things and not done some things.

Kathy Clarich – Well, we have done it, if they moved it to another piece of property, that did not have water rights and then put it into production. We have done it that way.

John Faw – Okay. So, is that needing to be in one of the stipulations, that enough water is moved off of this, to dry up a building site? It’s fully “water-righted,” now, basically.

Eric Evans – Right and that’s where it does get a little but iffy, where it has full water rights... it’s got a pretty... the soil classification – is class II soils. I mean...

John Faw – I really agree with this. I just don’t know how it fits in the parameters we have to work in.

Eric Evans – I mean, I think that if a property... Technically, in the legal world, if a property has water rights, there is case law out there that says that it is useable for farm use. You can’t meet that criteria to say that it’s not, if it’s had water-rights. So, we have done things similar. We have taken things off that the house portion didn’t have water rights, necessarily. But, we decided that it wasn’t really interfering with farm-use by giving a little piece of pasture with it. But, actually, putting the house on a place where it actively had water rights? Probably, it does not fit in with the rules.

John Faw – That is what I was afraid of.

Eric Evans – That would be the only thing that I have any kind of heartache with it, is that second parcel. How are we saying that it’s not suitable for farm use? That’s what we are really saying here is that, that is not suitable for farm-use. That it has water rights, and even transferring it off there and putting a house there, you’re making a finding that it is not suitable for farm use.

John Faw – Didn’t we run into one a while back, where they tried to move the water off of that and make the property qualify for a non-farm partition? And that wasn’t an allowable use.

Eric Evans – I don’t remember. But, yes, we have had this conversation several times, right? Stephanie and I were talking about something similar today. I think there’s case law that says even moving water rights... In the past, I think that Malheur County did, but then the case law came out fairly recently and said “moving water rights doesn’t mean that it is no longer suitable for farming.”

Stephanie Williams – Or letting them go, that five-year period.

Kathy Clarich – It doesn’t make it qualify?

Stephanie Williams – That doesn't make it unsuitable for farming.

Kathy Clarich – So, basically what you are telling us is that the one parcel could be divided off, no problem?

Eric Evans – I would agree, yes. In a flag lot, or even with some kind of an easement with their driveway.

John Faw – I'd say, with just the easement should cover that.

Eric Evans – Easement and a roads maintenance agreement.

John Faw – Well, you won't need a road maintenance agreement. It's only one house.

Eric Evans – Well, it would be the house and the farm. So, if the road stayed with the farm, then you would need to say who is maintaining that.

John Faw – Because the farm really doesn't need to maintain that road for...

Eric Evans – Well, they will be pulling... Isn't that the only access to the farm even? Or is there more access to the farm?

John Faw – How many grade crossings have you got there? Two? Three? On that piece?

Dan Fulleton – I'm not sure. It might be one. But the adjoining property has access into it. I'm not sure where that... No, it has two. It has two, on that piece right there (pointing to screen). There always were two, and when the pivot went in, we worked with ODOT and moved it just a little bit, so that the pivot wouldn't affect that driveway. So, it just moved over, I don't know, 100 yards?

John Faw – Didn't you have to go through the Railroad to do that?

Dan Fulleton – We did it all, yeah.

John Faw – Would they have to get approval from the Railroad to put that second house over there? I don't know... Because, it's a private crossing now. I don't know whether you would have to get the Railroad's permission to put a second house there anyway, because then, it would be a private drive for three, instead of just one.

Kathy Clarich – Can you make the parcel a little bit bigger? Like, more on the screen.

Stephanie Williams – Does it say private on that, for the crossing? Because I have seen private crossings in Malheur County where "private" was in favor of the land owner and not the railroad. Where it's a private crossing in favor of the landlord, you don't have to get the railroad's permission. But, you do need to research it to see.

John Faw – Yeah, I don't remember. There is a sign there.

Stephanie Williams – There is one in Nyssa, too. It says “private crossing.” But, it is private to the houses. It’s their private, Union Pacific does not...

Eric Evans – It’s not for public to use. It’s for the private use to access the land behind it.

Kathy Clarich – But the railroad can’t come in and close it off, then?

Stephanie Williams – Right.

Clark Forsyth – That’d land-lock it otherwise...

John Faw – They can’t do that. Not where it’s existing. They would never approve a new one.

Stephanie Williams – And it’s not gated, it does not have any arms or anything? It is “unmanned?”

John Faw – Right. There is not even a signal on it.

Eric Evans – I don’t know how this railroad is, compared to like UP (Union Pacific) necessarily. But, UP, for sure, wouldn’t. But I don’t know about here, these short-lines, or whatever they call it.

John Faw – I’m just asking the questions. I don’t know the answers. I’d just hate to get you in a pickle, down the road.

Dan Fulleton – Okay, so when we put this in, we weren’t dealing with this railroad. It sold to someone, essentially.

Eric Evans – Right, but the easement would stay in place, right? If there was a crossing through that, some kind of agreement, then that would maintain with whatever new railroad bought it. It should be perpetual.

Dan Fulleton – The other railroad was kind of... The paperwork... I don’t know, whatever we did was through Loren and that other outfit. So, whatever we did outside of what we presented here, for the crossing, that was through ODOT. And the railroad just approved it. Because, it was an improvement over the last crossing. We actually improved it to better standards, when we put this in.

Eric Evans – Right, right.

Dan Fulleton – And so, the new railroad would have to go to the office down there, I would think, and look at the agreement we had.

Eric Evans – Right.

Dan Fulleton – I don’t know the rules on that...

John Faw – I think the biggest hang up is the water right.

Kathy Clarich – The water right.

Dan Fulleton – So the water right is only one point some-odd acres of three...

John Faw – Yes, but you don't have room on there to put the house that's not in the creek.

Dan Fulleton – Right. Correct. Absolutely. I mean it isn't the entire 3-whatever-acres. But, I understand if this isn't going to work.

Eric Evans – The thing is, it will take a little bit of changing... I mean, I wouldn't have the order ready to sign tonight. But, I mean we can approve just the one, right Stephanie?

Stephanie Williams – Mm hmm.

John Faw – But doesn't that eliminate the opportunity to do a second one?

Stephanie Williams – He can reconfigure for a second one, somewhere else, if he wanted.

Eric Evans – Oh, somewhere else on the farm, is what you are saying?

John Faw – Is there another spot besides this piece? Down by the other crossing?

Dan Fulleton – You know, yeah, we could consider it, on that piece of property. I don't know.

Eric Evans – Was there a water rights map in here?

Kathy Clarich – I didn't see one...

John Faw – Not a total one.

Kathy Clarich – That one is a soil map.

Clark Forsyth – So, you can't have a house with a water right?

John Faw – You cannot take land out of production, to convert it to a residence. I ran into that.

Kathy Clarich – No net loss of farm ground if the soil is a good soil. This is class II. You have to protect farming.

Eric Evans – Whether that can support farming. That standard that we're looking at, is that we are trying to say, "this cannot support farming." It says specifically size, you can't use size as a factor.

John Faw – Oh, I know that well.

Kathy Clarich – So this back here is not farmed? Because it's showing this does not have any water.

Dan Fulleton – Right, So, what would we have to do... and maybe that is what we will need to consider. So, if we go through this house, to get to this piece of property (pointing to screen). That seemed more confusing to me, that this piece of property here (pointing to screen).

John Faw – This makes more sense. It just doesn't fit the parameters.

Kathy Clarich – But this does not have water rights.

Dan Fulleton – Right, and that is okay with me. Except for the fact that my access is kind of limited. It seems like it would be encroaching on this piece of property (pointing).

John Faw – Now, you'd have to create an easement to get in and around, or through there somehow. The current road goes right through the middle there.

Dan Fulleton – So, if we continue with my application on this, we can approve this and I can work with this (pointing). If it doesn't work, then that would just be a future failure. But, right now, we could consider this and then reconsider this (pointing). Because this does not sound like it qualifies.

Kathy Clarich – It doesn't.

Dan Fulleton – You're right. I don't want to make something up about how it does or doesn't. That is fine with me if it doesn't.

John Faw – It's kind of a pain to farm it.

Kathy Clarich – Do you know how much you have here? And is there a road that goes around this way (pointing)?

Dan Fulleton – Nope. It doesn't come on this side of the house. And maybe what we would do is design to look that over. And if that doesn't work then, that's fine.

Eric Evans – It just doesn't show... it looks like the map isn't big enough. But, there are no water rights.

Dan Fulleton – Correct. And there is no access to that except going through the center of that property there (pointing). So, as far as... I could work on it, to see what I could come up with.

Clark Forsyth – So that back piece there, could you move the water from there to back over there.

John Faw – Well, you can't move the water off of that to make it qualify, is the problem.

Clark Forsyth – But is that if, they are both, what do you call it, Level II? Or farmable?

John Faw – Class II soils. You could, but that still wouldn't make this one buildable, because you took the water off of it to here (pointing). Not because of, just because you wanted to, doesn't make that one buildable.

Eric Evans – Again, every time we were approving this, it was suitability factor. So, is it suitable for farm use? And our findings are...

Kathy Clarich – Unless it had water, and yes, it has.

Eric Evans – When we approve one, our findings are “it is not suitable for farm use.” So, there’s case law to say that if it has water rights or even used to have water rights, then it is suitable for farm use. And there is no way to get past that.

Stephanie Williams – It’s different from Pozzi’s moving their water right off, because theirs was already, we determined it was already unsuitable. They were just doing it as a matter of convenience, not to make the property unsuitable. So, for Pozzis to move theirs off and transfer it over, it was for convenience, not to make it unsuitable. Just to make it a little bit better.

John Faw – That was on the existing parcel. Not one that they were creating. Now, if they were creating that one, it would have been a whole different story.

Stephanie Williams – Yeah. The one in front of us: They could either do another partition, somewhere else on the property, they could make this one bigger, so that the whole piece... so that there is a piece... unsuitable piece for the house.

John Faw – You could include this piece (pointing) with the house piece, could we not?

Kathy Clarich – They would have to transfer the water rights to whomever buys the house.

John Faw – Well, not necessarily.

Kathy Clarich – They still would not be able to build it.

John Faw – Well, they wouldn’t be able to build it, but it would move the ownership out of this, to this.

Eric Evans – It’s not taking it out of farming.

John Faw – Right. So, that would be a possibility. Because that little neck there (pointing) is hard to farm with today’s equipment. Just as an option.

Eric Evans – I’m not sure that’s a viable thing, right?

Stephanie Williams – Do you own both right now?

Dan Fulleton – I’m the owner of both.

John Faw – He owns it all.

Eric Evans – I couldn’t remember who owned the house, or how Ruth played into all of this.

Dan Fulleton – So where Ruth plays into this is: With me investing into a house and the farm, I was looking for an investor, a little bit. Because it doesn’t help me necessarily, to buy a house, just to buy a house. So, with being able to break the parcel off, I could possibly sell it to her. Or, have somebody in the house that I can have a little control of, since we own it, anyway. It just makes sense. I can’t sell it the way it is, because it is part of the farm.



Eric Evans – And you are not necessarily wanting to be the landlord.

Dan Fulleton – As well as, for me to get rid of the house, I would have to get rid of the whole piece of property. And I don't want to do that, so that I have some control of it. It's more important to me.

Kathy Clarich – So, this is my idea, and I'm passing it by you, Eric. That we hold off on even doing this one partition, and give him time to see if there is a way he can move to that other that has no water on it?

Eric Evans – I think there are a couple of options. You could do that. We could do a continuance. He could come in to you guys with a new proposed plot plan, right? Or, you could just approve the one. Or, I think there is another option: That you guys could approve it, contingent upon, that they provide evidence to the Planning... You could give us, the Planning Department, the right to say "Okay, yes. It now meets that criteria. You're no longer building... your new proposal does not have water rights."

John Faw – Somehow, I would like to see the opportunity to at least be explored.

Kathy Clarich – Well, if we just approve the one, right now, then he can't come back for the other one. That's my understanding.

John Faw – That's my understanding.

Stephanie Williams – Right.

Eric Evans – Well, it's not really the approval that stops him from doing a second one. What stops him from the second one is him filing a partition plat. That is when the creation date changes on the parcel and, therefore, you can't do anything new after that date. So, it's the filing of the partition plat that actually creates that new "creation date" and makes it to where you can't do anything more after that. So, you could approve the one tonight and then, before he files that plat, he says "Okay, I have figured out how to get this to work." I'm not sure... part of it depends on what he wants to do. If he is good with one, then let's just do this. If he wants to explore it, then we could table it. One of the problems with tabling it...

Kathy Clarich – ...is time.

Eric Evans – Is time. We're already going to have to figure out a date, probably beginning of December. Some time to have a Planning Commission. We'll talk about that later. It just puts it off a little bit longer.

Dan Fulleton – I think what I want... So, the property with this proposed piece with the house on it, the building. I've looked at this piece back here (pointing) and this does not have good access. You see a road going around it. There is nothing maintained, it's for ditches and irrigation purposes, to be able to access the backside of the pivot. This piece here can be used for other things on the farm, for hay stacking and different things. One of the problems with that is access. So, we're back to the access issue. I would love to be able to look a little harder, but I really want this piece (pointing) approved and done if we can, now. I don't know. I think we have exhausted all the opportunities to

use the piece of property that's available right now.

John Faw – The only thing that I can see is if you include it with the house.

Dan Fulleton – If I take that piece and move the water right and move it back here and try to access that, then that does not qualify?

Kathy Clarich – You can't do that.

John Faw – It's not going to change the ability to build this. It would just get rid of this in your farming practice, convert this to cash instead of land. This little sliver. Because you could leave it with that and it would be one parcel.

Dan Fulleton – But they could not break it off either?

Kathy Clarich – Nope.

John Faw – It would just be a pasture that went with the house.

Dan Fulleton – The original consideration was to take this and move it to the home and develop the ground back there. I don't think that any of this is good if I can't access that piece of property. I would not want to be a part of this place if my main road goes here. If we come around this way, it's still intrusive and ruins farm ground, because this is water rights ground here, that would turn into a road.

Kathy Clarich – I was going to ask you, how are you going to access this without going through that property anyway?

Dan Fulleton – You can't... under our farm practices right now. Because that pivot actually...

John Faw – Goes right to that...

Dan Fulleton – Right up to this property (pointing).

Clark Forsyth – So, just for my own mind, that piece in the back there, are we saying that is not farmable? Is it already classed "not-farmable?" Or is it classed the same as the piece out front?

Eric Evans – We're saying that it doesn't have water rights.

John Faw – It's never been water-righted. Never been farmed.

Eric Evans – So, that is where we get into that unsuitability factor.

John Faw – It doesn't mean that it couldn't be, but there's no water for it.

Clark Forsyth – Not unless you moved it over there.

John Faw – Yeah, but then, that still doesn't change the footprint of that one is the problem.

Kathy Clarich – But this one still can be farmed? It has good soil and has water?

Clark Forsyth – Well, you are going to put water on good soil in the back that's not being farmed right now. So, you're going to just do a swap.

John Faw – I know. But that's not the way the rules are written.

Clark Forsyth – Well, interesting...

John Faw – Yeah, stupid rules.

Stephanie Williams – Well, if they let you move it... to wherever the irrigation company says. They might not let him move it back...

Eric Evans – Right.

Clark Forsyth – Yeah. I'm speaking under the assumption that if you could move the water, too. If it's class II land also, and it's not being farmed today, then, that is just a swap.

John Faw – But it's not class II ground.

Clark Forsyth – Okay, that was my question.

John Faw – That's the issue. Where it doesn't have water right and hasn't been farmed. This is not class II. It would be with water, but it's not. Correct?

Eric Evans – That can be correct. But, I'd have to look at an NRCS (Natural Resources Conservation Service) map.

Stephanie Williams – I don't know. Yeah, just moving the water right, if it elevates the class? I'm not sure.

Eric Evans – Typically, NRCS has, when you are looking up their web soil survey online, it does have an irrigated versus non-irrigated classifications for the soils.

John Faw – I've got all of those books, but it has been a while since I've looked at them that closely.

Kathy Clarich – Yeah, they are not that exciting.

Eric Evans – If you give me a second, I could pull it up.

Clark Forsyth – Well, I don't if it really matters.

John Faw – I'm not sure it's going to make any difference, either.

Clark Forsyth – Just a thought in my mind.

John Faw – Well, it would make sense.

Clark Forsyth – If it's class II soil, and you add water to it, then it's farmable. Then it's like, okay, we've just swapped it. I don't see what the issue is there.

Dan Fulleton – Let's do that.

Eric Evans – That is the unfortunate thing. But the thing is, that we all know that the laws... isn't what makes the most sense, at times. In the case law doesn't necessarily...

Stephanie Williams – We can make farm ground. We're just not allowed to make non-farm ground.

Eric Evans – Right.

Kathy Clarich – So, he can apply for more water rights if he wanted to water this back here. And then he'd have that farm ground, but he can't...

Eric Evans – He can't take that away and say "this is no longer farm ground." Because, the way the law is written, it's about suitability.

Kathy Clarich – And it's already been proven that it can be farmed.

Eric Evans – It feels like a drinking game, every time we say "unsuitability" right? I know I'm kind of hammering that, because that is what it's about: Is it suitable? The case law says that once you have water rights, you cannot make it "unsuitable" anymore.

Clark Forsyth – So, then, it's kind of a moot point. It has to be tabled, or "approved?"

Kathy Clarich – Either that, or else... If you go ahead and divide this one off. Do the partition to divide this one off (pointing), and you go ahead and follow through on the partition for it, then you cannot take another one off.

Dan Fulleton – That's why we want to pursue this (pointing).

John Faw – It makes so much sense. Because you don't get a second chance.

Kathy Clarich – If you wanted to hold off on this, to give you time to go look and see if there was a way you could figure out another path.

Dan Fulleton – I've been there since 2008. There's really is no other access.

Kathy Clarich – That's what I kind of figured, because I've worked some of the ground.

Dan Fulleton – Well, we maintain that property, to keep the weeds down back there. Honestly, for hay stacking purposes, we can access this field, as long as it's in hay stack acre. We can drive in and

have access. But I don't want that to affect my access. My access will still be here, to be able to get to here to service the back side of there.

Kathy Clarich – That's what I would say. If you are going to partition this off, you are going to have to keep your easement through there.

Dan Fulleton – And we will maintain that for whomever. And, this here (pointing) is something that we've been maintaining. We don't have to be concerned about that if there is one piece of property here. It would be an agreement with me and whoever I sell it with, right now. So, here is what we do. We will just do this, and cancel the other one, and go on.

Kathy Clarich – Just do the one partition?

Dan Fulleton – Yes. I don't know what else to... The reason we went for this is because of the access to that from the highway. The farm-ability right now... Maybe what I'll do myself is move the water right from here to here and call it good. Because, that won't affect anything. I still own it. If I put it with this property here, right now, I still own this property and I can access to move it over here. Then, in the future, I don't know that I want to maintain that.

Kathy Clarich – You will have to check... Is this Warm Springs?

Dan Fulleton – It is Warm Springs.

Kathy Clarich – You will have to check with them, too. Because, they have to report everything back. So, you have to make sure that they would let you move it. But, you still wouldn't be able to build on this. You could use it for stacking your hay, or...

Dan Fulleton – Right. Yep.

John Faw – You could stack things up against the road.

Dan Fulleton – That's fine too. That's why we did this. We thought we could. But, apparently, we can't. I didn't know that.

John Faw – It makes sense. I would love to see you...

Dan Fulleton – And we can't revisit anything later. I mean, if we delay this, to look into this any further, I think we have exhausted the purpose of what that value would be there for.

Kathy Clarich – Yeah, it would just be if there was a finding of another way.

Dan Fulleton – I've been there. I'm there right now. I appreciate your concern about why we would want to do it. But, if the rules don't apply... At least no other extra tax payments.

Clark Forsyth – Yeah, there you go.

Stephanie Williams – You might be money ahead.

Eric Evans – Yeah, honestly, I actually think that it’s probably going to be a pretty good chunk of change. Three or four thousand dollars probably, just in back taxes.

Dan Fulleton – Okay, I am fine with this.

Eric Evans – So, are you talking just the 1.96 acres in the original survey you did back in 2015 that wasn’t recorded.

Dan Fulleton – Correct.

Eric Evans – You have the easement. Oh, you actually had it on like a flag lot?

John Faw – No, it’s a new access easement on this map.

Eric Evans – Oh, it is an easement? So, the driveway will be with an easement to the new house.

Dan Fulleton – It’s not “new” house. It’s to the old house. It’s always been that way.

Eric Evans – Oh, to the old house. Right

Dan Fulleton – I never had control over that, anyways. I mean, it’s an easement to the house, whoever lives there, at that point.

Eric Evans – I just need to know, as I’m writing up findings for this, whether I’m requiring a road maintenance agreement and an easement. But it sounds like I will.

Kathy Clarich – Well, he is going to want to make sure that he keeps an easement through the property, to get to the back.

Eric Evans – To the house?

Dan Fulleton – No, to the back side of the house.

Kathy Clarich – To the side of the house.

Eric Evans – This house has got to have access. So, either this is going to be through ownership or through an easement.

Dan Fulleton – Okay. So, if I sell it, that is when we do an easement, correct?

John Faw – Might as well do it while you are surveying.

Eric Evans – Yeah, it will be on the partition plat, as an easement. Sometimes, they even put the road maintenance agreements as part of the partition plat, as well.

Dan Fulleton – Okay.

Eric Evans – So, you can do that, either through... I mean it's easier to file that alongside as part of that partition, or you file a road maintenance agreement as a separate document with the County.

Dan Fulleton – And, my access through, I do that at the same time?

Kathy Clarich – But then he has to have that access through, you would have to do...

Dan Fulleton – Who do I talk to about that?

John Faw – Whoever is doing your survey. Just put it on the survey. That way, it takes care of it. That's the neatest, cleanest way.

Dan Fulleton – Oh, my survey? Good.

Kathy Clarich – You have an easement already set up through there, then you don't have to worry about it. Just make sure your easement is wide enough for... whatever equipment you are going through with.

John Faw – Yeah, don't scrimp on the easement.

Eric Evans – Well, it also needs to be at least... also for fire access, right?

John Faw – Because the road is plenty wide enough now. There is turnaround space in there. But you will need to make sure that you can get through there.

Dan Fulleton – It would be for the... sure. Okay.

Kathy Clarich – Yeah, because you don't want to all of a sudden, not be able to go through, because your equipment is too big and can't take it through there.

John Faw – Because this isn't always going to be hay.

Dan Fulleton – During harvest, we have never... we would never go through there.

Kathy Clarich – I mean, you may know who you want to sell it to now. But you don't know, in the future, who that is going to be sold to. So, you have got to have all that considered.

John Faw – It's the third owner down, that will bite you.

Dan Fulleton – Okay.

Kathy Clarich – Yeah. Exactly. Okay. Do you, have you got what he wants to do then?

Eric Evans – Yes.

Kathy Clarich – So... did we ask for proponent or opponent yet?

Kathy Clarich – Is there anybody here, who is in favor of... a non-farm partition and one non-farm dwelling... on parcel 1? Is there anybody in favor of it, who would like to speak? Anybody opposed to it?

**No proponent testimony.**

**No opponent testimony.**

**Closed to public comments.**

Kathy Clarich – So, do you want to make motions?

Eric Evans – I would accept the findings of fact, as amended in our discussion.

***Commissioner John Faw made a motion to accept the findings of fact, as amended in the discussion. Commissioner Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present.***

Kathy Clarich – So, do we need any of these conditions of approval? Do they need to be changed here, from what we had?

Eric Evans – No. Everything would just apply to the one.

Kathy Clarich – Do we have something on the easements in here, too?

Eric Evans – Yes. That must be what... I don't know if you guys have this one, but Tatiana put this on the front of the file. She had added a condition, an ingress, forgotten before it went out, I believe. So, she has it on this one. She also proposed "an ingress/egress easement and a road maintenance agreement must be entered into the chain of title."

Kathy Clarich – Okay, so we have got it in there?

Eric Evans – So, it's in my stuff. It just wasn't included in your guy's packet.

Kathy Clarich – Okay, that's the only question I had.

Eric Evans – I knew there was a reason for the insert... she even highlighted it for me. I know she had a conversation with me.

Kathy Clarich – Okay. So, do we have a motion for the one approval of one non-farm partition and one non-farm dwelling?

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

Dan Fulleton – So this will be completed upon the survey then?



John Faw – The survey, yes. You have got to get it surveyed.

Eric Evans – The reality is, that if you go home tonight and you think you really want to do “X,” you could come back in and say you want an amendment to this application. And we could reconsider it.

Kathy Clarich – Before you partition it off.

Eric Evans – Really, it’s the filing of that plat that’s your “drop-dead” date.

John Faw – Make sure that your surveyor puts all your ingress/egress and your easements in there, while he is doing this. It’s way easier to do it then. Because he’s there and doesn’t have to come back and draw them out. I don’t know who you’ve got for it.

Dan Fulton – You hired him.

John Faw – I know. The County hired him.

Eric Evans – Well, he did a lot of the stuff for us, but there’s a lot of surveyors out there still. Have you talked to anybody yet?

John Faw – I just haven’t worked with any, locally.

Dan Fulleton – So, I was working on talking to somebody who did it before, which was in the file. It was... Leiland?

Eric Evans – Yeah, he passed away.

Dan Fulleton – I heard about his son. Does he work under somebody?

Eric Evans – So, his son is not a licensed surveyor.

Dan Fulleton – But, does he work under somebody?

Eric Evans – He may have been for a little while working... I haven’t seen him doing anything again for a little while now. But, if you come into the office, I’ve got a list.

Dan Fulleton – I’ve picked up that list. We were working down that list. I wouldn’t mind a referral.

Eric Evans – Well, I can give you a list. I can’t suggest anyone specifically.

Kathy Clarich – We can’t refer you.

Dan Fulleton – Alright. Thank very much.

(multiple conversations at once)

**NEW BUSINESS**

**Applicant:** Tracy and Caroline Boster

1825 Boster Lane  
Adrian, OR 97901

**Owner:** Tracy and Caroline Boster  
1825 Boster Lane  
Adrian, OR 97901

*Conditional Use Permit for a non-farm dwelling in an Exclusive Farm Use zone pursuant to MCC Title 6, Conditional Uses 6-6-7, 6-6-8-1 and OAR 660, Division 33, Agricultural Lands, for tax lot 1700, Section 34, T.21S, R.46E, W.M. Planning Department File #2023-09-018; Malheur Co. Ref. #10786.*

Kathy Clarich – Okay, next thing on our agenda: Tracy and Caroline Boster. I need to read this in again. Now is the time to hear the request for a conditional use permit for a non-farm dwelling in Exclusive Farm Use zone for applicants Tracy and Caroline Boster. Planning department file 2023-09-018.

1. There is a general time limit for testimony of 5 minutes. The applicant's initial presentation will be 20 minutes; with a rebuttal of 10 minutes.
2. All testimony and questions shall be directed to or through the chair. Testimony and questions should not be directed to staff or directly to witnesses.
3. Do any members of the County Planning Commission need to abstain, disclose conflicts, disclose biases, or disclose any ex parte communications or site visits? If so, state the reason.  
*Vice-Chairman Ed Anthony has been to the site*  
*Chairwoman Kathy Clarich has been to the site*  
*Commissioner John Faw has been to the site*
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?

Land use statements for the record: Oregon land use law requires several items be read into the record at the beginning of the 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:

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 an EFU, ERU or EFFU Zones

MCC 6-3A-3: Allowance of Certain Uses

Oregon Administrative Rules

OAR 660-033-0130 (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.

Kathy Clarich – We will first start with the staff report. Eric?

### **Preliminary Staff Report**

Eric Evans – This is Planning Department file 2023-09-018. It's a Conditional Use application for one non-farm dwelling. The applicants are Tracy and Caroline Boster. So, this is tax lot 1700. Township 21 South, Range 46 East, Section 34. County reference number is 10786. The property is located about four and a half miles south of Adrian, off of Big Bend Road.

It's zoned Exclusive Farm Use. The parcel is 5 acres. It's currently vacant, with irrigated land being used for row crop farming. All the surrounding properties are in farm use. Proposed access would be off of Red Top Road. Obviously, any dwelling here would require a DEQ-approved on-site wastewater treatment system. The parcel is located within the Adrian Rural Fire Protection District.

The property is located... water rights-wise, is located within Riverside Irrigation District and currently has five acres of water rights. The applicant has requested that the District remove one acre of water rights to the adjacent property to the west, owned by them as well to accommodate the construction of a dwelling. The majority of the soils are predominately class IV, with a very small portion of class III on the northeast side of the property. There is no known zoning history about how that parcel was created there.

Kathy Clarich – Okay. Ready? Who is going to be speaking? State your name and your address, please.

### **Applicant's Testimony**

Tracy Boster – Tracy Boster. 1825 Boster Lane, Adrian, Oregon.

Kathy Clarich – Okay. Tell us what your plans are.

Tracy Boster – Well, that property when we originally bought the property on the west side of Boster Lane, and created Boster Lane there, that was a little over 9 acres. Then, a few years later, we bought this other side. It was a five-acre lot there, that was originally set up... there were several different lots out there, but that was originally set up to be able to put on a house on it; years and years ago. So, we've owned it for about forty years, more or less.

There was a time when the State gave us the option to either to put something on it, or have it go as farm ground. We weren't prepared to do that at the time. The Riverside Irrigation said "If you want water rights on there, you need to have water on there, in order to maintain the water rights. If it's not on there for a given length of time, then you lose those water rights." And so, that's why we put water on there. It's sprinkled down. To put row crop in there would be impossible. Well, I guess you would have to pump a lot, up here. This side is up higher than down here (pointing). The water used to come down this direction and then it would go all the way through, down below, and down to the bottom end. When I first got it, I could hardly get it over this ridge (pointing) because of gopher problem. I did, at one time, irrigate it even down below here (pointing) on some corn. I rented it from the neighbor, ran corn on it a little bit. It was more than I can handle. I'm no farmer.

So, we've been living there, raising our kids on it. That's the main reason we have that. When bought that, there was a lot of Russian olives, a lot of elms on there. So, we took time and got rid of all those and cleaned it up. We put some underground pipe coming down out underneath, between, underneath the ground here (pointing) and coming down to my pump on this property. So, I pump water up here to run the irrigation.

My son-in-law and my daughter are close by and have been living with us for two years. We're getting to the age where it's not as easy for us. We lost all our help. And so, we don't have the help that we need. And so, they suggested that would be a good option for them to buy that and put a house on it. We thought it was a great idea, so that's why we're going there.

It has access. They show a picture of their proposed entry into the... we have one acre down at the end, which is probably the worst part of ground on that area. They have one acre where they would put the house and all of their, everything they need to drive on that one acre. They will have a drive-in coming in from Red Top, and one going in to Boster Lane. And we would maintain Boster Lane.

Kathy Clarich – So, Boster Lane is not a County road?

Tracy Boster – No. We maintain it. This is a county road. Red Top, and this path part, it was gravel for a long time. Then I petitioned a number of years back, to put pavement on it. So, that's why there is pavement on that part of it.

John Faw – Is there a road maintenance agreement? There's a number of houses, several houses on Boster Lane.

Tracy Boster – There is our house. There's, uh, three houses on it. It used to be: My aunt used to own this one and she sold it to the Burgesses. Then, this other one, up here further, is owned by David Helk, from Idaho. And he just uses it periodically.

John Faw – Do you have a road maintenance agreement on that part?

Tracy Boster – It's all just part of my...

John Faw – You just do it? Okay, so you don't have one.

Tracy Boster – I just maintain it. I put gravel on there. My four-wheeler has a blade on it and I keep it up nice. I spray it all the time.

Kathy Clarich – So, the other houses all have written use easements onto Boster Lane?

Tracy Boster – Yes.

John Faw – Because this one, the way it's proposed, you wouldn't even really need to use Boster Lane.

Tracy Boster – No, not really. No.

John Faw – Because you could come off of it from anywhere.

Tracy Boster – It's been a separate tax lot since we've bought it. So, there's no big changes on that.

Ed Anthony – We're coming right back to the non-farm use.

John Faw – Yeah, we're butting right up against it. My question, when I was looking at this, knowing some of the history out here. In a previous life, I did some work out here. I'm curious of when this lot was created and would it qualify for a lot of record, because of when it was done.

Eric Evans – It's not the creation that determines the lot of record. It's the ownership. So...

Kathy Clarich – And he had to have been the owner before a certain time?

Eric Evans – 1985.

Tracy Boster – We were really close there, weren't we?

John Faw – I think it's in their deed.

Tracy Boster – I don't remember the exact date that we bought it.

Kathy Clarich – I don't remember seeing it either.

John Faw – I don't think that I saw a deed on that one either.

Eric Evans – I was going to look it up.

John Faw – Here is another one, that makes just as much sense as that last one.

Tracy Boster – Might have it on this (searching).

John Faw – But it's got the same problem.

Tracy Boster – But being on the other side or the river, on the river side and that ground is not that great of ground.

John Faw – It doesn't matter. It's got water and it's being farmed. Being farmed: that's what makes it.

Kathy Clarich – And the address is still Oregon? Even on that side of the river?

John Faw – Yeah, it doesn't make any sense if that's Oregon. If it's Idaho water. All the rules over there are somewhat different, but... I'm hoping that this will qualify for a lot of record.

Eric Evans – Yeah, so, I don't have a copy of the current deed. I can't access those from here either.

Stephanie Williams – Yeah, usually, we do a complete title search, for when people ask for a lot of record. We don't just go back to like '85. We will go back to '75, at least.

Tracy Boster – We bought our place in '79. And it was after that, that we bought the other acres.

Eric Evans – Let's see what I can find here, really fast

Tracy Boster – And those lots were created about the time we bought that. A little bit before that.

John Faw – This isn't the first place that we have run into where it was done once. Then, the state...

Eric Evans – The Assessor's records show a sell date, for that five acres, of 1992. For \$5,400.

Tracy Boster – Yeah, we paid for it, so much a year. We actually bought it before that.

Stephanie Williams – Oh, you had it on contract? On a land contract? But a deed wasn't transferred during the land contract?

Tracy Boster – Probably not. Well, we got the...

Caroline Boster – (inaudible)

Eric Evans – I mean, regardless, with the lot of record. Lot of records are not approved by the Planning Commission, anyways. It's an administrative action in the office. Even if you guys denied this tonight, then, he could come into the office and apply for a lot of record.

John Faw – Currently I can't see where we can.

Clark Forsyth – I was going to say. This is, this shouldn't even... yeah.

Eric Evans – It's the same conversation. Just so you guys know a little bit of the history of stuff. So, Tatiana took care of this in our office. The way I look at these decisions, we can make suggestions to these people coming into our office. If they want to apply, we are going to allow them that access to you guys.

Clark Forsyth – But this is a law, though, right? You're saying that they can't... We have no supervision over this law. So, it's like "why is it here?"

Eric Evans – So, again, that suitability standard is rebuttable. There is a chance to rebut that. You can come up with an argument to say that “for this reason, it meets it.” But, right now, just moving or transferring water rights, does not rebut that suitability standard.

Clark Forsyth – But the quality of soil in this one could possibly...

John Faw – Well, it’s a class IV.

Eric Evans – Well, soil quality-wise: You’re looking at a class VII and VIII in Eastern Oregon and you have to actually go through a DLCD-approved certified soil scientist to get that reclassified.

Clark Forsyth – Okay, well, then we have to deny it. We don’t even have to deny it. It shouldn’t be here. I guess that’s why I’m confused.

Kathy Clarich – So, if he can apply for a lot of record, then...

Eric Evans – If you come to my office and you say, “Hey, listen. You are telling me no, this can’t happen.” So, that’s a land use decision. So, if I am telling you “No. You can’t do it.” That is a land use decision. I am making the quasi-judicial land use decision...

Clark Forsyth – ...based on the law.

Eric Evans – I realize that. But, even when you go through a court system, any kind of judicial system, it’s always based on the law. Both arguments are based on law, right? And you are arguing that law. So, my decision, that quasi-judicial decision that I am passing, is appealable. You can appeal that. So, rather than going through those processes, it’s my take that we can tell you until we are blue in the face what we think. But, we will bring it in front of you guys.

John Faw – Could this be appealed, through the County Court?

Eric Evans – The decision? It has to be. I mean, they have all the applicable rights.

Stephanie Williams – And, there is fact finding that has to be done. And you are the fact-finders. The Planning Commission are fact-finders.

Tracy Boster – So, what about the history? When I purchased it originally, it was designed for a separate lot.

John Faw – I owned some land that was in five-acre parcels. Until a certain period of time. Then, the state, in their infinite wisdom changed the laws. Then that no longer affected. So, it’s got to do with acquisition dates. It’s got a lot to do with it.

Ed Anthony – So, I like you said: if you could prove that you bought it and had it in your name before ’85, you could get it done.

Stephanie Williams – January 1, 1985 is the date.

Ed Anthony – January 1? Thank you. Otherwise, probably not, the way the law reads.

John Faw – Well, it makes so much sense.

Tracy Boster – Oh, yeah, big time.

Caroline Boster – So, our mistake was putting water rights on it. Because, our neighbors did two other houses and theirs was just cheatgrass.

John Faw – Yeah, if it was dry, it would be a different matter.

Tracy Boster – And we kept water on this place up here (pointing) for our neighbors, so that they would have water rights up there. And then, we weren't going to keep the pipe going up there...

Ed Anthony – It must have had water rights when you bought it.

Tracy Boster – No. There were no water rights when we bought it, then. Well, I shouldn't say that...

John Faw – Riverside allowed you to put them there. So, they transferred some to there, from somewhere else.

Eric Evans – They were District water rights. Back then, they didn't map the district water rights. They were, kind of this, like...

John Faw – They knew how much they had and how far it would go.

Tracy Boster – They were reorganizing all of that, during that time period. They gave us the okay and "If you don't have it in, for the next three years..."

Ed Anthony – You would have been better off putting four acres of water out on that farm. That way you would have more acres that was dry.

Eric Evans – Right.

John Faw – Hindsight. But, nobody knew or could tell you then.

Clark Forsyth – Well, you own all that parcel (pointing) there. So, there's water rights on all of it. The five acres, the forty acres, or 100 acres?

Tracy Boster – Well, a total of thirteen acres.

Clark Forsyth – Thirteen acres? And all thirteen are in... have water on it?

Eric Evans – Well, except by where the house is at.

Tracy Boster – Except where the house is, right.



Clark Forsyth – I have no comment.

John Faw – I agree. This...

Clark Forsyth – That’s bunk! No. Not my law.

Kathy Clarich – Well, unless they go back and have something that shows that...

Tracy Boster – That’s the only option we have right now?

Kathy Clarich – Pretty much. I can’t think of anything else.

Eric Evans – They would have to provide us with some findings that say that it’s unsuitable. Even if there’s water rights. And, I am not aware of anything that has ever made it through the court system, that has allowed that.

Tracy Boster – It really just did not even make enough money to pay for it.

Ed Anthony – I know a whole bunch of farm ground that doesn’t make enough money.

John Faw – Unfortunately, that’s not the standard.

Eric Evans – And another unfortunate thing is that, when the legislature’s talking about farming, it’s not just row crop farming. It’s not just alfalfa, or seed, or anything like that. They are also including those farm activities, that aren’t actually farming. Like, building hay sheds, stacking hay...

Kathy Clarich – Pasture, or cattle, or a horse or whatever.

Eric Evans – There is a lot of things we don’t think of as farming, that’s actually part of farming. Like, actively planting crops isn’t the only activity that they consider farming.

Tracy Boster – So, if it was an employee of mine, that I had on there. Would that matter?

John Faw – That is a whole other set of rules and regulations to apply.

Eric Evans – It wouldn’t matter in the fact that you would have to meet the commercial resource. So, you would have to prove that it’s a commercial resource. So, you are making enough money to justify an employee. Or, even a family member, right? Even a family farm dwelling. You have to justify: “Look, I make enough money to support this other household or other individual” in order to meet that. Just in the county rule, size alone is something to not meet the commercial resource. You have to be a real, true farming operation.

John Faw – I’m wondering, would a family member helping because of age?

Eric Evans – A temporary hardship

John Faw – A temporary hardship. But that’s a temporary thing.

Eric Evans – Temporary hardships have to be on the same lot or parcel.

Tracy Boster – But, if we own that (pointing)?

Eric Evans – If you consolidated those for Planning and Zoning purposes, and put it with this same, with the other parcel. Then, we could talk about a temporary hardship dwelling.

Clark Forsyth – But, it's temporary.

Eric Evans – It's RVs and manufactured homes. And then, you couldn't really change ownership of that. It's not like you are... A lot of times, you run into things like financing issues with that. Because, if you don't have a parcel to get financing on, it's really tough to get even a manufactured home.

Clark Forsyth – Isn't that what Ron Deburr did? He had that hardship in there, for his dad.

Eric Evans – Yeah, we have lots of them. We do those all the time

Tracy Boster – But, they're not... they only have to be certain types of homes, right?

Eric Evans – It has to be a manufactured home, or an RV, is what our ordinance calls out.

Clark Forsyth – How long do they stay?

Kathy Clarich – If the hardship goes away, they have to... it has to be vacated, too.

Eric Evans – Right, so now, you have a manufactured home. The hardship is over, whatever that means... But you also have to have a bona fide medical hardship. You have to have a doctor signing off on it. Saying "yeah, this person has a fall risk" or whatever a doctor is willing to sign off on it, to say there are medical problems.

Tracy Boster – So, if we vacate the water on it, for a number of years, leave it dry, and they take away our water rights?

Ed Anthony – Still can't do that.

Kathy Clarich – But you still had water on it and it's still been farmed.

Eric Evans – I'm not aware of any kind of case law that supports that.

John Faw – Because it'd have to be five years just to vacate the water and how long would it have to be past that, to prove it's unsuitable for farming?

Ed Anthony – It was farmed at one time. Yeah. so they would never say it's not suitable.

Kathy Clarich – It's just says in there, something about if it has ever been farmed.

Clark Forsyth – I find it interesting that we can go into farm ground really easy, even unconsciously. But you can't get it back out. That is crazy.

Eric Evans – Welcome to Oregon.

Tracy Boster – That's why we want to move to Idaho.

John Faw – You're closer than the rest of us.

Eric Evans – You're not very far.

Tracy Boster – Alright, I appreciate your time.

Kathy Clarich – So, we need to make a motion.

Eric Evans – Yes. You can adopt the staff report as is, I think.

Ed Anthony – I make a motion to accept the staff report and the findings of fact as is. Oh, yeah. We need to do proponent, opponent, and all that first.

Kathy Clarich – Is there anybody here? We only have anybody, other than them, that is in favor of it? And, we have no opposition.

Kathy Clarich – Now, it's closed to public opinion.

**No proponent testimony.  
No opponent testimony.  
Closed to public comments.**

Ed Anthony – Now, I can make my motion to accept the staff report and the findings of fact as is.

*Vice-Chairman Ed Anthony made a motion to accept the findings of fact, as found in the staff report. Commissioner Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present.*

*Vice-Chairman Ed Anthony made a motion to deny the application for Conditional Use permit for one non-farm dwelling. Commissioner John Faw seconded the motion which was unanimously approved by the Commissioners present.*

Tracy Boster – And we will check our title.

Clark Forsyth – Please, do. Definitely.

Tracy Boster – Thank you for your time.

Kathy Clarich – Now, we go on to old business.

Stephanie Williams – Unfortunately, Tatiana had already told them. She came to me, you know, concerned about drafting negative findings and she said I really resent being in this position of trying to tell them. She said she tried to tell them. They insisted. She told them “don’t waste your money.” They are entitled to hear it from you, and not just from staff. That’s why we give it to you.

Ed Anthony – After that Fulleton deal, they probably knew.

John Faw – They knew they were sunk. When it came up on the desk, I was wondering why are we talking about this?

Eric Evans – When I was sitting here talking, he was looking over the top of that stand, looking at me. You could see it. That’s the unfortunate side of it.

Kathy Clarich – Well, this one...I think this is the one where it actually, in spots, says it does not meet the criteria. It does not meet the criteria. I’m impressed. This report is good.

Eric Evans – What choice do we have, when the application does not provide substantial evidence to support approval.

Clark Forsyth – Where I’m frustrated is...

Ed Anthony – No common sense

Clark Forsyth – Yeah. Until the law is changed, we can find all the facts we wanted to and it would still be denied, right?

Eric Evans – Ever since the Senate Bill 100 was passed, you hear a lot of counties saying they want more local control. We met with LCDC in John Day. The Judge and I were there. That was the entire topic. They have a new director of DLCD: doctor Bateman. That was the whole conversation. From us Eastern Oregon counties, we want more local control. This is what we’re talking about, right? Really, Salem is making these 30,000-foot decisions, that don’t make sense...

John Faw – ...on a five-acre piece.

Kathy Clarich – I mean, why do we even have these five-acre pieces?

John Faw – Well, it was created by the board...well, they could.

Stephanie Williams – Well, you can’t have it both ways. You either farm or you don’t farm. Oregon has kind of rat-holed you in. You pick. If you wanted a farm, you are farming: 13 acres.

Kathy Clarich – And changing it for 1 acre, for a house, and then farming the rest. That makes it even harder to farm.

Stephanie Williams – I don’t feel bad, will say that I just don’t.

Eric Evans – And, unfortunately, they won't even qualify for Senate Bill 16 either.

Stephanie Williams – Well, they live in a beautiful area.

Clark Forsyth – Oh, I don't disagree with that. He owns a five-acre lot that he can't do crap with.

Kathy Clarich – He could. He can put cows out there. He can make money off of cows right now.

Eric Evans – In reality, he could also sell it to his neighbor. His neighbor could farm it.

Clark Forsyth – Can he... annex it to his thirteen acres?

Stephanie Williams – Yes, he could.

Kathy Clarich – Except his thirteen acres is across the road. I don't know if that would cause some problems.

John Faw – But he owns the road.

Eric Evans – I don't know. I would have to look into that a little bit. Because, typically, we don't address by someone's driveway. That's the part that makes me a little bit iffy on whether it's actually some dedicated kind of public right of way. I would never address somebody on "Boster driveway." I just never would. Because, the public access is Red Top.

John Faw – I think they are. Because I worked on one of those addresses.

Eric Evans – Well, his address is "Boster."

John Faw – I know. But, I think one of the ones behind?

Eric Evans – I guess today, I wouldn't do that. You know, in the past, who knows what happened.

Clark Forsyth – For clarity though: If you buy, or if I went out there and bought his 13 acres, you cannot subdivide that, at all. In any shape or form?

Stephanie Williams – No.

Eric Evans – Zero.

John Faw – Even though, there's three of them on that road already.

Clark Forsyth – But those were done before. So, who... Is that a legislation thing? Who do you take that to?

Stephanie Williams – We have tried, and tried, and tried. That's why... we tried to do supersede it. We have tried and tried.

Eric Evans – So, the last Senate Bill 16 was like that. That last ditch effort to say. “Listen, we have land...” And maybe there is some chance to, once we exhaust that 200 acres, maybe we can say, “Hey, listen. We were successful, we still protected farm-land.” and figure out another way forward. But, right now, we are very, very limited. Because, we are protecting farm land, ultimately. That is the number one issue here, is the protection of farm land.

Stephanie Williams – Or, we need to do zone changes. We need to loosen it up for rural residential. But, even with 13 acres, there is no way. Even with the minimum of two, there is just no way. DLCD has just told Malheur Count and Eric has been trying to work on it. At one time, they told us “forty.” If we want to do rural residential, it had to be a minimum of forty (acres). Then, they backed off and said “No, twenty.” Now, I don’t know where Eric might be. But, we have tried and tried.

Eric Evans – I mean, I’m hoping for ten (acres). I wouldn’t be surprised if DLCD doesn’t come back and say “twenty (acres) is your minimum size to do housing.”

Stephanie Williams – The last time we went to DLCD, they said that they would help us do rural residential for twenty (acres).

Kathy Clarich – I kind of understand, after watching Idaho. I mean, the farm ground over in Payette that we used to spray all the time, every year... Now, they’re just putting the houses in like crazy.

Eric Evans – I have been very clear with the conversations with DLCD, when it came to Senate Bill 16, when we were trying to do Senate Bill 70, to try and get the fixes in there. That we don’t want to be Idaho. But, at the same time, we need to somewhat compete with Idaho. Because, it’s so easy to go and put a house on farmland over there. Here, we have got to keep these people over on this side of the river somehow or another.

Clark Forsyth – Well, it needs to make... I think what Idaho is doing, when you have a parcel next to the city that could easily be annexed to services, etc. I understand it is farm ground. But, if your city is growing... like you just said: You can’t have it both ways. You know, you are going to have to push the farm out a little further.

Ed Anthony – Yeah, but look at Boise. There is no farm ground over there. It used to be that there was lots of farm ground.

John Faw – Lots of farm ground.

Eric Evans – But we can do that too. That is the silliest part about this whole protection of farm ground.

Ed Anthony – Sooner or later, you are going to have farm ground leveled.

Stephanie Williams – Well, look along SW 18<sup>th</sup>. All along 18<sup>th</sup> has all been rezoned. That is just crazy. That is good farm ground, but that was all rezoned.

Kathy Clarich – But, it was an emergency. That’s when Smith came in. It was an emergency because we have got all these businesses that are going to come in there.

Eric Evans – So, when you do those UGB expansions, they do a 20-year study. And in that 20-year study, there's a huge amount of resources put into these studies. You say "in 20 years, we need 'X' amount of residential...". And that's how you justify that. That's how you get that Goal 3 exception, that excepts it from the protections of farm use. That's the urbanization, right? We are urbanizing. And it's silly. In one of Senator Findley's discussions about Senate Bill 16... He said "Fine. If you guys don't like this. We are using this non-productive, marginal farm land... Then we are just going to expand Ontario's Urban Growth Area, which we have the methods of doing that anyways. We're going to take Class I and Class II soils out of production. That's not getting us anywhere. But they don't understand that. It's not anything that registers. The expansions of Vale, Nyssa, Ontario, when they expand their UGBs, they are expanding into probably some of the best farm land that we have, in this county. It's silly that we can do that, but we cannot do something like this. But, it's how the law is written.

Stephanie Williams – And he's got water rights, he's made money off that property.

John Faw – Well, not according to him, he hasn't.

Eric Evans – Not enough. But, it's five acres. What was his expectation?

Kathy Clarich – I have a seven-acre alfalfa field. And we make enough put pay all the water on it, the fertilizer, and everything off of that seven acres.

Ed Anthony – You must be a lot better farmer than me.

Kathy Clarich – We put fertilizer on. I don't know what you put on.

### **OLD BUSINESS**

Kathy Clarich – Next, is our old business items. Adoptions of findings of fact for Brian Tseng to deny the conditional use permit for an RV park in a Rural Service Center zone.

Eric Evans – And you guys have already had the hearings. You guys have this in your packet. You guys just make a motion of what can be done.

***Vice-Chairman Ed Anthony made a motion to accept of the Findings of Fact and to deny the conditional use permit for an RV park in a Rural Service Center zone. Commissioner John Faw seconded the motion which was unanimously approved by the Commissioners present.***

Ed Anthony – I'm going to make a motion to accept the Findings of Fact on the gravel pit.

Kathy Clarich – Wait. Did you get that change made? On the gravel pit application. Is that under the Findings of Fact?

Eric Evans – Remind me of the change. The ones that we discussed last time?

Kathy Clarich – The one we just talked to you on the phone about. It was the one on Seubert Excavators, on the order. We had to change, because it's not a minor home... You said you were going to change it to an aggregate mining expansion? Page 20, after the conclusions.

Eric Evans – Oh, yes. That was on the... I do have it on the one that you are going to sign.

***Vice-Chairman Ed Anthony made a motion to accept of the Findings of Fact for applicant Seubert Excavators Inc. and to approve the conditional use permit application for aggregate mining and processing in an exclusive farm use zone. Commissioner Clark Forsyth seconded the motion which was unanimously approved by the Commissioners present.***

Ed Anthony – Do we have any minutes? I see no minutes in this.

Kathy Clarich – Yes, there's minutes.

Eric Evans – The September 2023 Minutes.

Ed Anthony – Got any changes, Kathy?

Kathy Clarich – Just had to ask couple of questions, for some written notes. I don't think there is anything else. Did you make the two changes?

Planning Staff – Yes.

***Vice-Chairman Ed Anthony made a motion to accept the minutes from September 2023 Planning Commission meeting, with the approved changes. Commissioner John Faw seconded the motion which was unanimously approved by the Commissioners present.***

Kathy Clarich – Oh, we need to talk about the date.

Eric Evans – So, I haven't actually deemed it complete yet. But I do have a new application from Darren Lee. On that property, off of Jasmine.

Ed Anthony – Is that the gravel pit?

Eric Evans – Yes, the gravel pit again. So, he has had to wait six months. It's been well over six months since we denied him. So, he is going to reapply. Originally, I had proposed that we would skip, typically try to skip November and December. But, you know I do have requirements to make a decision within 180 days. If we don't see, don't hear from him until the end of January. Then, if we continue that, and if he appeals it, then the final decision has to be made by the county, so that includes any appeal to the county court. So, I'm not sure that we can meet at the end of November. I have to notify DLCDC thirty-five days in advance. I haven't even deemed it complete yet. So, I still need to have a discussion with him, with some... actually, we forwarded this on to DLCDC. They made some comments on it and I need to have a discussion with him about what he needs to change in that application. Then, submit it, pay, and all that, before I deem it complete.



Kathy Clarich – I have a question. Is DOGAMI involved with it, too?

Eric Evans – There was an order with DOGAMI for them to restore that back to its original conditions, yes.

Kathy Clarich – And he had a date to have it done by?

Eric Evans – Yes. I don't know that date was, or where it stands.

Kathy Clarich – Okay. Is that something that we should know before it come back before us?

Eric Evans – If they are under an order? Then, potentially, yes. It's something that we can have a discussion on. I don't think that is a reason to deny it.

Kathy Clarich – Okay. I just wondered. Because I had heard the rumor that it was going through the District Attorney's?

Stephanie Williams – He did go to Justice Court. He did get fined.

Kathy Clarich – Yeah, but DOGAMI is fining him now.

Eric Evans – Yeah, so it's under enforcement through the county.

Kathy Clarich – I had heard that he had to have it done by the end of September. But he doesn't have that done?

Eric Evans – I have not really been following that, honestly. Because that is DOGAMI's thing. So, they had it through enforcement He appealed that decision to the State Geologist. And then, the State Geologist denied it, for lack of evidence. So, now, the final order was that he needed to restore it back to its original condition. I don't know where it sits, to be honest.

Kathy Clarich – Well, we went over and did some fields out there and it hasn't been restored.

Ed Anthony – So, the next question: Where do you want to meet? Want to meet the second week in December, something like that?

Marc Berg – November 23<sup>rd</sup> is available.

Eric Evans – Have we actually, I hadn't said anything. This is the new "Julie."

Marc Berg – I've been called worse.

Kathy Clarich – So, your one hundred-some days doesn't start, though, until you get a completed application from him.

Eric Evans – Until I deem it complete. Technically, I'm just reviewing that for him and he hasn't even made a phone call. So, before he has actually submitted it. Hasn't done any of that stuff.

Stephanie Williams – Can you talk to him and say we don't want to meet in December. Can we get him on the agenda in January? We may not have a quorum next month.

Kathy Clarich – Because I have a feeling, we are going to have an hour-long (or two) meeting, just for his stuff.

Stephanie Williams – No one wants to go through this stuff during the holidays. You're going to make him mad, meeting with him anyways.

Ed Anthony – I'm going to make him mad, no matter what.

John Faw – Move it back to January. I am going to be in Arizona.

Kathy Clarich – Because, you don't have the actual stuff. You are just reviewing it.

Eric Evans – The other this is: The law allows me 30 days. So, once he submits an application, I have thirty days to deem it complete or deem it incomplete.

Ed Anthony – And he hasn't given you anything yet?

Eric Evans – We're not even to that step, yet. The 180 days hasn't even started yet.

***Commissioner Clark Forsyth made a motion to adjourn the meeting. Vice-Chairman Ed Anthony seconded motion which was unanimously approved by the Commissioners present.***

Chairwoman Kathy Clarich – Thank you.

Submitted by Planning Staff Marc Berg.

Minutes approved by:

Name: Kathy Clarich Date: 1-25-2024