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I, Gayle V. Trotter, County Clerk for Malheur County,
Oregon certify that the instrument identified herein was
recorded in the Clerk records

Gayle V. Trotter - County Clerk

BEFORE THE MALHEUR COUNTY COURT

In the Matter of:)	
Appeal of planning commission's decision approving)	
a conditional use permit for a non-farm dwelling and)	Findings of
a non-farm partition by Jantz for)	and Order
property located in the EFU Zone - tax lot 700,)	
Section 16, T. 18S., R. 45 E. Map 18S4516)	GO-15-18
reference number 13746)	

I. GENERAL FINDINGS OF FACT

1. The subject parcel (parcel) is 195.09 acres located in the EFU Zone. It is described as tax lot 700 map 18S4516, Section 16, T. 18S., R.45 E., reference no. 13746. The property is owned by Galen and Sharlyn Jantz. Their court-appointed receiver (McKinlay) applied for a conditional use permit for a non-farm dwelling of the existing home, and a non-farm partition of approximately 20 acres also for the existing home. Planning Department file no. 2018-07-001.
2. The Malheur County Planning and Zoning Commission (Planning Commission) held a duly advertised and noticed quasi-judicial land use hearing on July 26, 2018, which was continued to August 23, 2018.
3. Adjacent and nearby landowners testified in opposition to the land use actions.
4. The Planning Commission approved Jantz's conditional use applications and entered an Order on September 5, 2018.
5. On September 17, 2018, Maria K. Joyce timely appealed the planning commission decision. Generally, the basis of the appeal is that: the decision is not supported by substantial evidence in the record; the uses on the property of the silos and scale are not legal and must be torn down; a permit for a commercial activity in conjunction with farm use should be obtained by the Jantz representatives to continue farm operations; the illegal uses must be torn down before new land use actions can occur on the property; and the applications violate SB 100.

The Court finds that the current farming operations on the property are permitted and do not require a conditional use permit for commercial activity in conjunction with farm use. See Gilmour v. Linn County (LUBA 2016).

6. On October 17, 2018, the Malheur County Commissioners heard testimony on appeal and made a tentative decision to affirm the planning commission decision. Pursuant to the Malheur County Code, the hearing was held on the record made before the planning commission.

III. FINDINGS OF FACT ADDRESSING GENERAL CRITERIA FOR SUITABILITY OF PROPOSED CONDITIONAL USES: PROPOSED NON-FARM DWELLING AND NON-FARM PARTITION PURSUANT TO MCC 6-6-7:

Jantz representatives made findings of fact addressing approval criteria for the conditional uses in their application, which application is incorporated herein by reference as though fully set out in these findings. In addition, the staff report and all exhibits presented before and during the planning commission hearings are incorporated herein by reference as though fully set out in these findings. Exhibits submitted during the appeal hearing by Ms. Joyce were reviewed by the County Commissioners, but not included as part of the record.

The following findings are also made:

A. Comprehensive Plan Goals: Comprehensive Plan goal and policies, as applicable.

The Malheur County Comprehensive Plan, Goal 3: Agricultural Lands (Ordinance No.191 (2010)) states:

6. The county will review and consult with irrigation and drainage districts on land use decisions to assure they will not negatively impact the integrity or operation of water for irrigation or drainage purposes.

Finding: In correspondence dated June 25, 2018 the Owyhee Irrigation District indicates it has no objection to the non-farm dwelling and non-farm partition. A separate measuring device will be installed for the non-farm partition. The non-farm dwelling and creation of a non-farm partition will not negatively impact the integrity or operation of water for irrigation or drainage purposes.

1. Public and private land classified by the Natural Resources Conservation Service (formerly U.S. Department of Agriculture Soil Conservation Service) as being in Capability Classes I through IV, as well as High Value Farmland as defined by Oregon

Revised Statutes and Oregon Administrative Rules and any other lands determined to be necessary and required for farm use, are considered agricultural lands.

2. High Value Farmlands (ORS and OAR designated) shall be given the greatest protection. Lands classified by the Natural Resources Conservation Service, as Capability Classes I through VI shall be afforded the next highest protection with Class I having the highest protection and Class VI the least.

3. In addition to the Natural Resources Conservation Service classification system, county assessor's records may be considered in evaluating individual parcels for the purpose of planning and zoning.

7. In addition to county code and State of Oregon's land use laws and administrative rules for non-farm dwellings, it is the policy of Malheur County that there be no net loss of farmlands listed on the High Value Farmlands soils or soils classified as types I-III by the Natural Resources Conservation Service.

Finding: The soils are predominately Class IV soils (assessor's records) with 115 acres of water rights. The non-farm partition will be at least 20 acres with 6.14 irrigable acres. There will be no net loss of farmlands.

The Malheur County Comprehensive Plan, Goal 10: Housing states:

Housing will be encouraged on land with the least agricultural productivity, in locations that compliment existing development, makes the most efficient use of required facilities, and presents the least conflict with agriculture in the area.

Finding: The requested conditional use is for one non-resource dwelling. The non-resource dwelling will provide additional housing in rural Malheur County. The necessity of providing adequate housing is not limited to urban Malheur County, but extends to rural Malheur County. Satisfaction of the general and specific criteria below demonstrates that the dwelling presents no conflict with agriculture in the area.

B. Specific Plans: Specific plan recommendations.

Specific plan recommendations are considered simultaneously with the specific criteria set forth in Malheur County Code Section 6-6-8. Section 6-6-8 is entitled Specific Criteria to Evaluate Suitability. If the specific criteria in section 6-6-8 are met, specific plan recommendations are also met.

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

Notice of the proposed land use actions were advertised in the newspaper and surrounding landowners received separate notice by mail. 10 adjacent or nearby neighbors

objected to the conditional use permits with primary concerns of truck traffic, health concerns, integrity of neighborhood and commercial farm activity. A substantial amount of testimony did not address the criteria used to evaluate suitability or was not applicable to the non-farm dwelling. Rather, the testimony was about the farm operations.

D. Services and Utilities. Availability of services and utilities.

A letter from the Owyhee Irrigation District was submitted as an exhibit stating that the District had no objection to the conditional uses. A letter was also submitted as an exhibit from the Vale Fire and Ambulance Department stating that fire protection is available to the subject property.

The parcel has power. The parcel is serviced by a DEQ approved sanitation system. A well is on the property, subject to a shared use agreement between the parent parcel and partitioned parcel.

Adequate service and utilities will be available to the proposed conditional uses.

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

a. Economic characteristics.

The non-farm partition will be disqualified for farm use tax assessment. Productive farm ground will not be removed from production by granting the application. The application will result in an economic benefit to the county when the home and property are added to the tax roll at full assessed value; farm use tax deferral is removed.

b. Social Characteristics.

The non-farm dwelling will be used for a single family residence. Socially, the proposed non-resource dwelling does not negatively affect the community.

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

The subject parcel is not located within a designated fish or wildlife habitat.

G1. Increasing setbacks of structures to reduce the possibilities of overshadowing adjoining property, noise, odor or night lighting nuisances.

The home site is several yards from the nearest public road – Vale View Road. The non-farm partition is located in the middle of the property. The homes located closest to the proposed conditional uses (closest home is 50' north) should not experience overshadowing or

night lighting nuisances. Odor, noise and grain dust from the silos and scale occur from the farm use and not the residential use of the property.

From these facts, the Court concludes that increasing setbacks for the non-farm dwelling/home site is not required.

G2. Landscaping improvements for the visual benefit of the subject site and the improved appearance of the neighborhood and County.

The conditional use blends in with the rural sites and appearance of the surrounding properties. From these facts, the conclusion is that no further landscaping improvements are necessary.

G3. Location and size of driveway access points and right-of-way widening and improvement and future traffic circulation and safety.

The property will be accessed from Vale View Road, which is a County Road maintained by the Malheur County Road Department. The County has no objection to the land use actions, and contrary to the neighbors testimony, finds that the access from Vale View Road is adequate. The County Court relies on the written testimony of the Malheur County Road Supervisor.

From these facts, it is concluded that the access and road improvements to the proposed conditional use will be satisfactory.

G4. Visual screening of outdoor waste and storage areas.

Generally, this criterion is not applicable to the proposed conditional use. The conditional use is for a single family dwelling. Therefore, the waste areas are none and the storage areas, if any, are minimal. Any outdoor waste and storage area developments will have to meet DEQ sanitation requirements. Standards for organic waste storage facilities exist in the Malheur County Code Chapters relating to Commercial and Industrial Zones. There are, however, no standards for organic waste or storage facilities in the Exclusive Farm Use Zone.

G5. Control and focusing of outdoor lighting to avoid glare being directed beyond property limits.

The character of the application as a single-family dwelling and rural home site inherently satisfies this criterion. As a single dwelling the conditional use will have lighting typical of outdoor lights and lamps fixed to a porch or near doorways to facilitate safe entry and exit to the residence at night.

From these facts it is concluded that outdoor lighting will be controlled on the proposed conditional use.

IV. FINDINGS OF FACT ADDRESSING SPECIFIC CRITERIA TO EVALUATE SUITABILITY OF PROPOSED CONDITIONAL USE: NON-FARM DWELLING IN AN EFU ZONE PURSUANT TO MCC 6-6-8-1

A1. The proposed conditional use is compatible with farm uses and is consistent with ORS 215.243.

This criterion indicates that the conditional use is to be “compatible with farm uses”, not that it be a farm use. The conditional use will site a rural single family home site.

The land underneath and surrounding the dwelling site is not cultivated. It consists of pasture and sage brush. From these facts, it is concluded that the amount of open land used for agricultural use will not change. The granting of this application will not result in loss of natural resources. The non-farm dwelling is, therefore, compatible with farm uses.

A2. The proposed dwelling does not interfere seriously with or force a significant change of accepted farming practices on adjacent lands; or significantly increase the cost of accepted farming practices on surrounding resource.

The property is buffered and separated from farmed areas by the topography. From these facts, coupled with the facts above establishing that the conditional use is compatible with farm uses, it is concluded that the single family dwelling will not interfere with adjacent farm practices. No testimony was presented that the dwelling and non-farm partition will interfere with adjacent farms.

Based on the correspondence from the Owyhee Irrigation District, the dwelling will not interfere with any existing water rights. The District did not express any concerns about the integrity or capacity of water rights. From these facts it is concluded that the cost of farming practices will not monetarily increase or be affected by the dwelling or partition. In addition, fire hazards are mitigated because the parcel is landscaped and serviced by the Vale fire department. As a condition of approval firebreaks should be constructed for the non-farm partition to minimize potential wildfire dangers. From this fact, it is concluded that the proposed use will not increase the cost of fire protection to nearby farming practices or the lands of adjacent landowners.

A3. The proposed dwelling will not materially alter the stability of the overall land use pattern of the area. OAR 660-033-130(4)(a)(D) –study map area

Description or study area.

61 homes/non-resource dwellings exist in the area with the potential of one more.
40 primary farm dwellings exist in the area with the potential of zero more.
No lots of records exist in the potential area.
1 hardship dwelling exist in the study areas

Potential dwellings in area.

23 farm dwellings
17 non-farm dwellings

Potential dwellings on property.

1 farm dwelling remaining 175 acres
2 non-farm partitions could have been sought by Jantz

Use of land in area.

The proposed non-resource dwelling will not alter the stability of farm uses in the area. Correspondence from the Owyhee Irrigation District reveals that the quantity of water rights in the area will not be affected by the conditional use. Farming operations will continue in the study area and not be effected by the non-farm partition.

From these facts it is concluded that the dwelling will not materially alter the suitability of the overall land use pattern in the area. The property has the potential for one farm dwelling site on the remaining 175 acres. The land use pattern and potential land use pattern in the area reveals a pattern of rural home sites (over 80). The size of existing rural homesites in the study area is consistent with the 20 acre non-farm partition proposed by applicant. The property to the south is 26.17 acres and property to the west is 15.08 acres.

- A4. Is situated on generally unsuitable land for the production of farm crops or livestock considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of tract.**

Soil.

The soil for the non-farm dwelling is not productive (sagebrush and pasture) and is not being farmed.

Terrain.

The subject parcel is on sloping terrain. The home site is located on the top of a hill on the property.

Location and size of tract.

The non-farm partition is at least 20 acres, class IV soils with approximately 6.14 acres of water rights.

From these facts, it is concluded that the dwelling is placed on land generally unsuitable land for the production of row farm crops or livestock.

B. Chain of Title: The following statement shall be entered in to the chain of title for the non-farm dwelling and partition as required in MCC 6-6-8-2 B. and MCC 6-6-8-1 B:

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

**V. FINDINGS TO ADDRESS NONRESOURCE PARTITION IN AN EFU ZONE
PURSUANT TO MCC 6-6-8-2**

A. Nonfarm Use: The creation of all new parcels intended for nonfarm use shall meet the following requirements:

1. Is the proposed use compatible with agriculture uses and is it consistent with ORS 215.243. How?

Same criterion and findings in paragraph IV A1. above.

2. Is the proposed use located where it may interfere seriously with accepted farming practices on adjacent lands? What conditions exist to avoid this problem?

Same criterion and findings in paragraph IV A2. above.

3. Will the proposed use materially alter the stability of the overall land use pattern of the area?

Same criterion and findings in paragraph IV A3. above.

4. Is the proposed use situated on generally unsuitable land for the production of agricultural crops or livestock considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of tract? If so, the following factors must be met:

Same criterion and findings in paragraph IV A4. above.

a. If located on range or agricultural lands, are the proposed nonresource parcels only as large as necessary to accommodate the use and provide any buffer area needed to ensure compatibility with adjacent agricultural uses? The intent is that Class I through IV soils be included within nonagricultural parcels only when the limited extent or physical configuration of such soils make it impractical to keep them consolidated in an agricultural parcel.

Finding: The non-farm partition is only as large as necessary to accommodate the use single family dwelling.

b. Are the proposed parcels located on land with predominantly low productivity V through VII soils not suited for agricultural use and are large enough to accommodate the use and provide any buffer area needed to ensure compatibility with adjacent agricultural uses? How so?

Finding: Although the soils are classified higher than V through VII, the land is not suited for agricultural use. Water rights do not cover the entire non-farm partition.

5. A new nonfarm parcel shall not be approved for a use that will have a significant adverse impact on the quality of farm or range land, watersheds, fish and wildlife habitat, soil and slope stability, air and water quality, or outdoor recreation areas. In what ways do the proposed parcels avoid conflict with these items?

Finding. The nonfarm parcel is not located within a fish or wildlife habitat. The partition is a single family home site which does not adversely impact soil, slope, air, water quality or outdoor recreation areas. The quality of farm land is not jeopardized as no lands will be taken out of farm production by creating the nonfarm parcel.

VI. MALHEUR COUNTY CODE 7-7-4 IMPROVEMENT REQUIREMENTS

Applicants provided proposed ingress and egress access easements to the home site and farm buildings on the property, as well easements for public utilities. Additional right-of-ways or road improvements are not required.

VII. CONDITIONS OF APPROVAL

1. Evidence shall be provided showing the non-farm partition has been disqualified for valuation at true cash value for farm use under ORS 308A.113, ORS 215.236, Malheur County Code 6-6-8-1 C and Malheur County Code 6-6-8-2 C. Any back tax liability must be paid.
2. A separate water measuring device must be installed for the non-farm partition as set out by Owyhee Irrigation District.

3. Adequate firebreaks shall be constructed and maintained to minimize danger from potential wildfires.
4. This approval is valid for four years from the date of this order. Vesting must occur within this time period or the approval will lapse.
5. The following statement must be entered into the chain of title of the non-farm dwelling parcel:

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

VIII. CONCLUSIONS

Based upon the foregoing findings of fact, the Malheur County Court makes the following conclusions:

Substantial evidence exist in the record to support the conclusion that the application meets the general and specific criteria established in the Malheur County Code for a conditional use approval in an exclusive farm use zone (EFU) for a non-farm dwelling and a non-farm partition.

The staff report, application, findings submitted by applicant, exhibits to application and minutes of public hearings are incorporated herein by reference.

IX. ORDER

Based on the foregoing findings and conclusions, the decision of the Malheur County Planning Commission is affirmed. It is hereby ordered that the Jantz application, for a conditional use permit for a non-resource dwelling and 20 acre non-farm partition for the existing home on tax lot 700, map 18S4516 in the exclusive farm use zone, is approved.

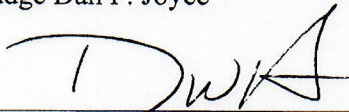
X. APPEAL

This decision may be appealed to the Land Use Board of Appeals (LUBA) pursuant to rules established by LUBA. Nothing herein obligates Malheur County to further appear or defend this land use action should it be appealed to LUBA.

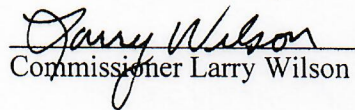
DATED this 31st day of October 2018.

ABSTAIN

Judge Dan P. Joyce



Commissioner Don Hodge



Commissioner Larry Wilson