

MALHEUR COUNTY COURT MINUTES

October 17, 2018

County Court met with Judge Dan Joyce presiding with Commissioner Don Hodge and Commissioner Larry Wilson present. Staff present was Administrative Officer Lorinda DuBois.

COURT MINUTES

Commissioner Wilson moved to approve Court Minutes of October 10, 2018 as written. Commissioner Hodge seconded and the motion passed. (Judge Joyce was not present on October 10, 2018.)

FUND TRANSFERS RESOLUTION

Commissioner Hodge moved to approve Resolution No. R18-25: In the Matter of Fund Transfers Under Local Budget Law ORS 294.463. Commissioner Wilson seconded and the motion passed unanimously. Funds are transferred from Contingency to Outside Legal Counsel/Defense. See instrument #[2018-3909](#)

OLCC APPLICATION

Commissioner Hodge moved to approve Oregon Liquor Control Commission (OLCC) Liquor License Application to The Store (Willowcreek)/Todd and Susan Gregory, nunc pro tunc to October 15, 2018. Commissioner Wilson seconded and the motion passed unanimously.

ROAD DEDICATION

Surveyor/Engineer Tom Edwards met with the Court and presented a partition plat with a road dedication for the Court's consideration. Commissioner Wilson moved to accept road dedication of a portion of Thrifty Way on M&K Properties LLC Partition Plat #18-14. Commissioner Hodge seconded and the motion passed unanimously. See instrument # [2018-3905](#)

ASSESSOR REPORT - APPEALS

Assessor Dave Ingram met with the Court and briefed them on property tax appeals. Three public utility companies have accounts in appeals. Level 3 - which sold to Centurylink - is still in appeals from last year and deferred billing credits will be done again this year. Tesoro Logistics NW Pipeline and DeShaw Renewable Investments have appealed their property values this year and deferred billing credits will be done. The appeals are in the Oregon Tax Court. The potential refund credit will be held in accounts by the Treasurer and is an estimate of the amount of taxes in dispute.

ECONOMIC DEVELOPMENT UPDATE

Economic Development Director Greg Smith and Staff John Braese met with the Court and provided an update. Also present was Assessor Dave Ingram and Planner Eric Evans. Mr. Smith explained that Phil Scheuers has left the company and will be missed; Nicole Crane will begin work for the company after the November election; and John Braese is working for the company and doing a tremendous job.

The project plan proposal for the Treasure Valley Reload Center Project was submitted to ODOT. The proposal includes the statutorily required economic analysis of the market opportunities in the Treasure Valley; the analysis is extraordinarily strong - far stronger than initially thought. The reload facility will need to grow in phases in order to meet the total demand.

Mr. Smith explained that Treasure Valley onions are shipped to multiple destinations- the major areas of distribution are Seattle, Denver, Chicago, Dallas, Miami, Charleston-Charlotte area; and New York. From these destinations the onions are then further distributed or exported. Backhaul opportunities from these major destinations are being studied. Mr. Smith is in conversations with Peter Friedmann, who is a nationally recognized agricultural transportation consultant, in an effort to possibly contract with him to assist with the project.

Union Pacific has accepted the application for the reload center and their engineering team will begin working with the Development Corporation's engineering team to develop the design layout. The construction firm that built the Railex facility in Wallula, WA; Delano, CA; and New York has been retained; the goal is to use as many subcontractors as possible.

The project plan proposal was submitted to ODOT September 27; it takes 2-3 weeks for ODOT to review the proposal for completeness; from there a committee consisting of ODOT representatives, Business Oregon representatives, and a private consulting firm will review the proposal for thoroughness and make a recommendation to the Oregon Transportation Commission (OTC). It is anticipated that the OTC will take action on the proposal by December 2018. In the meantime, backhaul opportunities are being studied as well as potential operators for the facility.

The Farewell Bend truck stop project is moving forward. A 40-thousand gallon underground fuel tank was placed and the underground infrastructure is moving forward. Issues regarding water for the facility have been resolved. It is anticipated that the facility will employ approximately 80 individuals. The facility will be constructed in phases and include a truck stop with a nationally recognized restaurant and flagship hotel.

Economic Development continues to work with small business owners in the County. Mr. Braese commented that the recent Vale FFA Auction was very successful.

Commissioner Wilson asked Mr. Smith about grant opportunities for county fairs. Mr. Smith explained that funding for fairs is challenging; the legislature allocates funding for county fairs; funding for operations is difficult - infrastructure funding is sometimes possible.

Judge Joyce left the meeting; Commissioner Wilson presided over the remainder of the meeting.

Ms. DuBois left the meeting.

APPEAL HEARING - PLANNING COMMISSION DECISION - JANTZ

Present for the appeal hearing regarding the Planning Commission's decision approving a conditional use permit to create a new twenty acre parcel with a non-farm dwelling on Exclusive Farm Use (EFU) zoned land were: Planner Eric Evans, County Counsel Stephanie Williams, Applicant Derrick McKrola, Matt McKinlay - Advanced CFO in its capacity as Receiver of Galen & Sharlyn Jantz, Appellant Maria Joyce, Jane Padgett, Gary McClellan, Mick and Shiela Jacobs, Jeff Bair, and Real Estate Broker Chet Pipkin. Notice of the hearing was published in the Argus Observer; Planning Department File #2018-07-001.

Commissioner Wilson opened the hearing and requested those testifying state their name/address for the record when called upon to speak; requested that testimony be limited to approximately five minutes; and directed that all testimony and questions go through the Court and not to staff or witnesses.

Commissioner Wilson asked for abstentions, and potential or actual conflicts of interest from the members of the Court; there were none. (Commissioner Wilson later noted that in reading the Planning Commission minutes of the July meeting it mentioned involvement of a real estate broker named "Chad" and he was concerned that that individual may have been Chad Currey who works in his real estate office; however it was later clarified that "Chad" was a typo and the correct name was "Chet" (Pipkin)).

Commissioner Wilson asked for any ex parte communications or site visits to be divulged; Commissioner Wilson and Commissioner Hodge both stated they had visited the site but had not talked to anyone.

Commissioner Wilson asked for any objections to the jurisdiction; there were none. Jane Padgett asked what the process was for the hearing and decision making; County Counsel Stephanie Williams outlined the public hearing procedure and explained that the hearing was on the existing record.

Commissioner Wilson asked for any objections to any member of the County Court hearing the matter. Maria Joyce asked if only Commissioner Wilson and Commissioner Hodge would be hearing the matter. It was noted for the record that Judge Joyce would not be participating in the hearing as the Appellant, Maria Joyce, is his sister. There were no objections to Commissioner Wilson and Commissioner Hodge hearing the matter.

Commissioner Wilson stated "failure to raise an issue may preclude raising it before LUBA; failure to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the County Court to respond to the issue may preclude an action for damages in Circuit Court."

Commissioner Wilson asked for a Staff Report.

Planner Eric Evans: Today we're here for, as you said, an appeal - the Applicant's Derrick McKrola for the owners - last name Jantz. This is Planning action number 2018-07-001. The Appellant is appealing the Malheur County Planning Commission's approval of a conditional use permit application to create a new twenty acre parcel with a non-farm dwelling on Exclusive Farm Use through a partition. The unit of land is northeast of Vale; the property address is 1547 Vale View Road, here in Vale. I wrote you a memo but it was incorrect and the minutes had to be corrected - the Commission actually didn't vote it unanimous, it was actually voted 8-1, with one voting no for the conditional use application. The appeal is on the existing record, meaning that no new information can be introduced at the appeal hearing. The Order approving the Conditional Use Permit with Conditions 1-5 is included in your packet, along with the transcript of the public hearing and Exhibits 1-7. Also included in the packet is the application. And, there's actually two different days they met, they actually continued it from July to August I believe.

Also in there you'll see the Appellants application for the appeal. I wrote a list of the reasons that she appealed this; one being that dividing the property is against Senate Bill 100; Jantz had a commercial operation in conjunction with farm use in an EFU without a conditional use approval, then she stated that "before the new use can be approved the unlawful use of the property must be corrected"; the Commission's decision was impacted by inaccurate information given to them by Counsel; the summary by the Planning Commission does not do justice to the concerns of the neighboring property owners; and, the prior Planning Director was notified in June 2015 of the zoning permit violations.

So, for you guys, the Appellant's burden is to demonstrate the decision of the Planning Commission to approve the conditional use permit is not supported by substantial evidence in the record. The options to you is to: uphold the Planning Commission decision; to overturn the Planning Commission decision; or to remand it back to the Commission.

Commissioner Wilson asked for proponent testimony.

Derrick McKrola, Applicant for the owner of the Jantz Family Farm, 3811 Birch Road, Vale: We already have it on the record, I understand that we

can't add or detract from that, so it's on the record that we've established the criteria for a conditional use permit. It's a little ironic that we apply for this permit because the conditions out there are existing. We gathered all the approval letters and established the condition to partition this parcel, more particularly and from a water right perspective how we were asked from the irrigation district to provide a separate pump and metering device and we have wrote that. The issues brought up in the appeal, I think there might be a little bit of misunderstanding in the terminologies used. What is farming? My understanding farming is commercial agriculture. And I don't know if that's within our limits as a planning commission to make the determination whether or not that the farming operation out there is legal or not. Some of the emphasis's were put on the scale and the storage bins out there, but those are vital tools in the farming business to market their product. And that's pretty much the thought of mine; I don't know the understanding of the appellant's standpoint as what's legal or not.

Matt McKinlay, Advanced CFO, Receiver of Galen & Sharlyn Jantz: I was appointed by Judge Baxter last year as the Receiver of Jantz Family Farms, Jantz Land Company, and Galen and Sharlyn Jantz individually, to take possession of their assets and administer them for the benefit of creditors and other stakeholders in the community. It's been my observation, also acting under the recommendations of real estate professionals and appraisers and land surveyors and creditors, that partitioning the property there is in the best interest of all parties, which led to our application to partition for the conditional use permit. I'll let the record speak. We went through very carefully the application of what the requirements were; we addressed all of the concerns of the Planning Commission. We have letters from professionals that have looked at some of the concerns around easements and access and electricity, power, water; we've addressed all of those issues and we ask that you uphold the decision that the committee made.

Commissioner Wilson asked for any questions from the Court or staff; there were none.

Commissioner Wilson asked for opponent testimony.

Maria Joyce, Appellant, 1586 Vale View Road: As we stated, dividing this property is against Senate Bill Number 100. Because we cannot trust what is done with the property in the past we cannot trust what will be done with it in the future. Therefore the property needs to remain in Exclusive Farm Use and zoning respective. Case and point: Alvin Scott who was Malheur County Planning Director sent me a letter dated June 12, 2015. In that letter he stated "he, Mr. Jantz, has a large operation and plans to utilize the granaries for his own use". He never mentioned that last year he allowed Mr. Belnap to store grain. Ed Anthony's testimony of July 26 Planning and Zoning Commission meeting states, quote, "I have sold corn to Galen, I have done business there and it's a rat race in the fall. You've got 7000 trucks going in and going out of there." So once Mr. Belnap trucks hit the scales it became commercial use according to Department of Ag. Commercial use require conditional use permits; conditional use permits according to Malheur County Code require a conditional use study that includes researching the environmental, economic, and social impacts of the already existing community. The lack of study and permits has had a huge impact on all of these areas for the existing community. So before new use can be approved the unlawful use of the property must be corrected. The fact is that the silos used by Mr. Jantz, to the best of our knowledge, our observation, and information from local farmers and what the newspapers have stated, is evidence that has not been the case; it has been used as a commercial storage and weighing facility for numerous farm operations; a brokerage, operating in violation of the zoning laws. I have inquired multiple times at Malheur Planning and Zoning Department as to where are the permits; I was told there was no file on Jantz; there apparently is one now. So the silos were not approved for commercial use; because they were used as commercial purposes and the weigh station being right across the road from our property, which is 1586 Vale View Road, they have created significant health risks to Mary, who is the property owner, and her sons, Michael, John, and Joshua Herbert, and myself, and I believe the whole farming community as well. And the men that I mentioned have significant disabilities and they reside directly across from the farm. So prior to Mr. Jantz's arrival, Mary did not have asthma, and for myself personally, I don't have a history of allergic reactions; I had an allergic reaction, this was December 13th, I had just closed the car trunk, turned around to see the trucks making the turn into the weigh station, and I said to myself, oh my god I can't breathe and there's no one here to feed the cattle and horses, and it was very difficult to make my way to the barn, I wasn't even able to climb the fence, I had to use the gate, and I did not know what was happening and I was trying to decide whether I needed to call an ambulance. I managed to get through that reaction. I went to the doctor and the doctor said that I had an allergic reaction; I have that letter here because I said in the other notes that I would provide that information. So just a note about allergic reactions - second exposures are often worse. So because of the unsafe conditions that all of us at 1586 Vale View Road have had we've had to leave there. Its created significant problems for all of us because at certain times of the year we've had to leave our own house. This was especially the case from December 1st - December 13th, 2017 when a corn dryer was put into operation. According to Department of Ag corn dryers must have conditional use permits. Conditional use permits according to County Code, the Malheur County Code, require a conditional use study. So obviously they would not pass. We've been subjected to extreme levels of pollen, dust, both dirt and corn dust, noise, diesel, and the particles coming from the corn dyer and the silos and those coming off of the trucks as their on the weigh station. So it's hard really to live in the house now, let alone sleep; I can't even sleep in my own room, I've had to put in new doors and windows at my own expense and this did not mitigate the problem. So I'd ask you to think about how you would feel in this situation. So, Planning and Zoning, I've notified them, and I have that letter from June 12, 2015. Consideration of the historic use of the property must be considered. We were there long before the silos; not just us but all of our neighboring community. Because of this our property's lost value; this was our home, alright, this was a great place to be for John, Josh and Michael. Prior to Jantz moving in there I was able to do equine therapy for them out there and they were able to enjoy that right in the arena that's adjacent to right across the road from where they've now put their scales. It's difficult to be outside because of all of the allergies and allergens. Malheur County Code gives preference to existing neighbors. In the past the courts have determined that farming practices must be done in a reasonable and prudent manner. The nuisance threat from the corn products and the operation are not reasonable and are not prudent and they violate health, safety, quality of life, and the economic value of our properties have been negatively affected. So I'm sorry that this has become such a huge issue when it could have been resolved at the very beginning peacefully. It would have been nice if in the beginning, in 2013, Jantz had taken into account his neighbors; that he would have put himself in that home and asked would I do this to my own family or would I allow someone else to do this to my family? Would any of you want to raise your family in these conditions? So like I said, when we moved to the property 24 years ago we all thought we had found our little piece of heaven and now, at different times of the year, which is a large significant time of the year, it's a living hell. So now we're asking for the County Court to consider our point of view and do the right thing with this. I have supporting evidence here that backs up what I said in the other meeting. But I'd like to conclude with a letter from the boys - the men: *Dear Malheur County Court, Please get rid of the silos and the scales because the trucks go too fast and the corn just blows into our faces. We can't breathe. Sometimes we can't stay in our house because the dust comes in. Signed, Michael Herbert, Joshua Allen Herbert, Jonathan Herbert, 1586 Vale View Road, Vale, OR 97918. Dictated to Mary Herbert.* And so, I have included here supporting evidence of everything I said in the meeting in August, so that includes John, Josh, and Michael's letter, a petition from all of our farming neighbors to remove the silos, weigh station and shop, and it includes the signatures of Mendiola's who weren't able to be here. Dr. Miller's letter. Alvin Scott's letter of June 12, 2015. Capital

Press news article about Mr. Jantz's operation and articles on the impact of corn dust and pollutants.

Commissioner Wilson: Do we already have those or are those to be entered into the record?

Ms. Williams: Those have not been entered into the record. You can look at them..

Ms. Joyce: They're supporting evidence - so whatever you want to do with it.

Commissioner Wilson: Is there any other opponent testimony?

Jane Padgett, 1625 Vale View Rd: I don't need to come forward other than I want to say that it feels like there has been a lot of weight put on professional peoples testimonies and opinions about this and not very much credence given to the people who live there and have to navigate it. I'll just say for myself, as someone who has lived there for 27-28 years now, I've walked up and down that road all that time, for years, it is so unsafe now because of the multiple trucks and the traffic that's going in and out of there is horrendous. And Jeff, this is nothing against you, I know you have a job to do and a business to run, but the trucks are speeding and there's dust all the time and it's scary.

Jeff Bair: It's a dangerous road.

Ms. Padgett: It has changed the way that I feel about my community. It has changed the way I think about wanting to stay there. I just think some attention needs to be paid to the people that have lived there for a long time. It's not just about making a living.

Gary McClellan, 4025 Saddler Ln: What Jane Padgett says is I think echoed throughout the rest of the community. I've lived there since, well hell my grandfather took a place out of sagebrush so its been a lifetime ordeal. The problem that I see with this whole situation, the Planning Commission was formed to save farm ground from the encroachment of residential homes. That's pretty much been the entire focus of the Planning Commission as I understand. They make exceptions for various reasons, mainly if there's a hardship or individuals or families that the rules and regulations would create problems for, or if there's some direct benefit for living conditions that they could make. The decision that was made here was made directly for the bank, and I don't approve of that. It doesn't benefit any of the neighbors, it doesn't benefit the people who even live in the home up there; it doesn't benefit them at all. It simply opens up the door, if this division is going ahead, we now have - there's a home there that's going to stay there, if we make this division we open up 175 acres of farm ground to a farmer that will be sold to someone - he now has the right to put a home on there. Then we will have two houses instead of the one we're stuck with. So you open up the door to more encroachment, more homes, creating more problems for the neighbors and the neighborhood with the excess traffic and whatnot. This decision was brought forth by two very fine gentlemen, but they're professionals, they don't live there, they don't have to deal with this problem. We do. And I just, I think there's every reason in the world to overturn the Planning Commission's judgment, and I know it's a tough job for them and I know it's a tough job for you fellows, but I think if you'll really stop and think about the reason for all of this, if you think about what it all entails - what the Planning Commission was there for and why are you making a judgment that benefits nobody but the bank. There's nobody in the neighborhood it's going to help; it's strictly a financial decision. And I don't think that's right. Thank you.

Shiela Jacobs, 3980 Saddler Ln: I'm just going to kind of reiterate (inaudible - coughing) at the planning and zoning one, with separating the partition, the house and the farmland; they both have easements to access the barn. The farmer has to have an easement from the people that own the house to get to their barn otherwise they're going to make a new road, which isn't very feasible. And the people that own the home have to have an easement through the farmer. If anybody's been around this community for a while - it's probably not going to go along too well. It is a flag lot so they would put in a, there is an option to put in a new road, which is right along our fence line. And if you've looked - it's not very safe, especially with all the truck traffic. If you go to the east you can't really see up over the hill from where they would have that flag lot. And, talking back with the traffic - the amount of trucks - there is a high number of trucks; I want to say we've had two trucks that have crashed into our field in the time that we've live there, which is 14-plus years, including one less than a month ago. I come home from work, somebody's fixing the fence, by the time I can get out there, fence is all fixed, they're gone. Never heard anything about it. Luckily our horses didn't get out. There is a lot of traffic on that road, especially with the silos. If there is another driveway there that's, I mean, I see how many times during harvest trucks go in and out - there's going to be an issue between the farmer and the house owner. And also, from what I understand, the house, if somebody bought the house, if it was partitioned off, somebody bought the house, they have to pay back taxes, they're probably going to end up having to put in different irrigation, water, maybe a well, I don't know, because right now the well that serviced the lawn is not working - the lawn's dead now. That's a lot of money; it's not going to be a local person. So they're not going to have an understanding of our agricultural area. Thank you.

Commissioner Wilson: Any other opponent testimony? Okay, hearing no more, is there any public agency testimony other than what we already have? Could we ask, would the staff give us a staff report and recommendation?

Mr. Evans: At this point, using the information that was on the application for the appeal, I would recommend that the County Court upholds the Planning Commission decision.

Commissioner Wilson: Any other staff comments? Do you have any questions for the staff?

Commissioner Hodge: No.

Commissioner Wilson: I have a couple of questions for maybe Eric or Stephanie, but can we ask that after we hear any rebuttal or do we need to do that right now?

Ms. Williams: Well usually you ask the questions so that if they want to comment and you have additional questions they have an opportunity to do that.

Commissioner Wilson: Okay. One of the questions I had is the, I kind of have two separate deals, and I think I'm correct on this so you can answer that, but, if you own over 80 acres, currently you can split off two parcels. There's some caveats. The remaining parcel still has to remain over 80 acres - so if you had 90 acres for example - you could split off a two and a five or whatever, there's no specific sizes for non-farm partitions and they go through the same procedure. I guess what I just want to know from staff is, and I got some information on it from you guys, but, just sort of for the

record, we kind of have two, if the silos weren't there it doesn't sound like we'd have, we'd just be in the normal over 80 acre parcel, wanting to split something off for a residence, or an existing residence off of it. So, the Planning Department or staff, you don't feel like there's a, that's not a commercial activity that made this illegal to start with.

Ms. Williams: I don't have all the facts of what it started out to be. I can tell you right now that I don't think it's a commercial activity in conjunction with farm use. There's a 2016 case that has been cited by DLCD, our regional rep who provides us with direction, called the Gilmour case. It was a hay processor who processed hay on his property from not only what he grew but also from other farmers. He dried it just like you're drying corn; it's really not processing, it's not changing the configuration of the product. The Court of Appeals and LUBA said that is not a commercial activity in conjunction with farm use. That's what we're basing it on in this case. I appreciate that they brought this up because at very least the County needs to issue a letter to the Jantz Receivership telling them what they can and cannot do because I do think that there was some question in the past about whether that was a commercial activity in conjunction with farm use. It currently is not. You cannot store other people's grain in there without growing your own. You can do no more than just dry what you have. I want to be really clear that we are going to be writing you a letter making sure that you do understand that there cannot be any commercial activity in conjunction with farm use there.

Ms. Padgett: Can I ask a question Stephanie? There's lots of trucks using the scales, I don't know if they're all Jeff's or if they are other people's too.

Ms. Williams: They are Jeff's.

Mr. Bair: I have 23 trucks.

Ms. Padgett: Okay. It's just, it's horrendous, it's really horrendous.

Commissioner Wilson: Well and I know in the past, aren't I correct, like, onion storages on farms, there was a packer over in the Nyssa area, they primarily did their own onions but you are allowed to, they weren't processing, they were packing, but you are allowed to store and pack a certain percentage aren't you without becoming, as long as you're doing a certain percentage, is there a percentage or is there...

Ms. Williams: That goes for processing and that's not what's being done here and so it really has no application...

Commissioner Wilson: Even the packing is sort of kind of considered processing? I know we're talking two different commodities...

Ms. Williams: They cannot process, pack or treat grain on the site other than simply drying it and we will be issuing them a letter.

Ms. Joyce: According to Department of Ag a corn dryer has to have a conditional use permit.

Ms. Williams: I don't know what the Department of Ag - I'm looking at land use planning. I don't enforce Department of Ag; the County doesn't have a role in that, ours is just strictly planning and zoning. I'll just read you an excerpt in the Gilmour v. Linn County case, it's a 2016 case, Linn County required Mr. Gilmour to obtain a conditional use permit for a commercial activity in conjunction with farm use for his straw compressing operation in the EFU Zone. The operation consisted of several buildings, storage facilities and machinery. Mr. Gilmour appealed Linn County's decision and both LUBA and the Oregon Court of Appeals determined that a conditional use permit was not required even though Mr. Gilmour compressed up to 25,000 tons of straw purchased from other farmers when compared to the 5,000 tons he grew on site. Compressing and preparation of hay purchased and grown by Mr. Gilmour for storage and shipping was a commercial farm activity and permitted outright in the EFU Zone. It did not require a conditional use permit. I'm not going to debate it any more. I'm here to advise the County Court. There is case law on it. We've talked to DLCD, our representatives. I talked to Mr. Bair about truly what his activities are out there and that's what we've determined. We are going to be issuing you a letter though. And I appreciate that the neighbors brought it up; I think that it was pushed by Mr. Jantz.

Commissioner Wilson: Okay, that was kind of the question that I had. Don did you have any other?

Commissioner Hodge: No, other than just listening to what Stephanie said, but, Maria - you have another question?

Ms. Joyce: I do. What about the fact that farming has to be done in a reasonable and prudent manner and that nuisance threat coming over, to my knowledge and the court cases that I've researched, if it impacts even one organ - I mean, that's a problem.

Ms. Williams: It's a private lawsuit and you need to sue privately, it's not something the County can do for you.

Ms. Joyce: But what about the County not backing, not requiring the permits and everything from Mr. Jantz and allowing what he did wrong. That's a questions. I'm just asking a question.

Ms. Williams: I don't have enough facts to even really respond to that.

Mr. McClellan: What kind of facts do you need?

Ms. Williams: At this point and time it's not for me to pursue, it's not for the County to pursue, it's not occurring now. If you feel there's a private lawsuit you need to pursue it. This is purely a planning and zoning issue.

Mr. McKrola: It seems it's on the owner to take that responsibility of being within their legal means of their farming practices.

Commissioner Wilson: Yes.

Mr. McKrola: And we will gladly accept that letter.

Commissioner Hodge: Well you'll receive the letter.

Commissioner Wilson: And we do have, there's that farm, there's that disclosure for when parcels are split off, I mean we're talking about whether there's already a house there or one to be built, that they accept that they are in a farm use zone and they tend...

Mr. Evans: That attaches to the partition for the non-farm dwelling

MULTIPLE TALKING

Commissioner Wilson: to the partition but it doesn't go, it'll remain EFU just like it is now

Commissioner Hodge: And I think, didn't it say in there this was Class 3 and 4 farm ground

Commissioner Wilson: Well really the

Commissioner Hodge: Or 4 and 5; 3 and 4 I think.

Mr. Bair: 6 and 7 as well

Commissioner Wilson: As far as what we're really looking at this meeting - I guess when we go into deliberation I'll answer that.

Mr. McKrola: A concern was brought up at the hearing of the potential of opening up the door for another dwelling for the larger parcel. But that's only going to happen through another conditional use permit - is that correct Eric?

Mr. Evans: It'll be over 160 acres so it's an allowed use.

Unknown: They don't have to apply

Mr. Evans: They have to go through our rules but it won't go in front of the Planning Commission.

Commissioner Wilson: And that's an issue down the road when somebody wants to build there.

MULTIPLE TALKING

Commissioner Hodge: its statute already

Mr. McKrola: And also the alternative access easement that was brought up - you'll see it in the exhibit - it's not necessarily next to the fence line, it's up on where the visibility of accessing (inaudible - multiple talking)

Mr. Bair: Essentially by putting that access in there you wouldn't be able to have the scales there whatsoever because there's no turnaround area for the scales (inaudible) somebody would have to actually move the scales.

Commissioner Wilson: I don't have any other questions.

Commissioner Hodge: I don't have any.

Commissioner Wilson: Would you guys like an opportunity to rebut any?

Mr. McKinlay: Thank you. I appreciate Ms. Joyce's comments about health issues and I'm certainly empathetic to those. She made the comment "in 2013 it would have been nice if Jantz would have taken his neighbors into account"; I completely agree. My feeling is we're not here though to discuss or decide on whether what Mr. Jantz did in 2013 was the right or wrong thing to do. We have a hand of cards that we've been dealt with and its how we maximize what we have based on the hand we've been dealt. The comment that we please get rid of the silos and scales - that's not the issue today. And just a couple of other quick comments. Gaylen and Sharlyn Jantz do not own the property; there's not a possibility that they will own or control the property - I'm sorry - they own the property but they don't control the property and there's not a chance that they will control the property in the future. The Receivership is a temporary proceeding; at some point the individuals behind me are going to get a new neighbor - that we know. What our hope is is that the application here before you today is that we can find them the best neighbor we possibly can. We know that there's very few buyers in the marketplace right now for a 300 acre farm with 7000 square foot home and an 18,000 square foot shop with three grain silos - right? But our belief is that there is a market for a 7000 square foot home; 300 acres isn't going to cash flow that type of property, it's an igloo in Hawaii - right? There isn't a strong market for that. But we believe there is a market for the home separately and there's a market for other farmers that have a use for the scales and the shop and its beautiful space. Our application here is to find neighbors that will take good care of the property; that will have an ownership interest in the property and therefore hopefully have some consideration for the neighbors that live around them and can do a little bit better job taking care of the property than did Mr. Jantz.

Mr. McKrola: I appreciate being referred to as professionals. There's a few subjectives that have been entered in here. If you don't mind me adding - I grew up in a farm/ranch - John Day/Mt. Vernon two hours west of here; and I currently live in a rural residential area just a mile and a half west of Vale. I've been here over nine years and I acknowledge the farming community. I recognize that Ms. Joyce is surrounded by farming. And I don't know if there's anything that we can do to mitigate the farming practices. If we were to take that as a factor into concern of somebody's health we're asking all the farmers to stop farming. Because you're surrounded, that area right there, primarily by farm ground. Like I said earlier, the conditions out there are existing, they've got the house and the farm and we're just trying to find the best way to preserve the farm and the house.

Commissioner Hodge: Thank you.

Commissioner Wilson: Thank you. Anybody like a chance to rebuttal?

Ms. Joyce: His good neighbor comment - the only way to have good neighbors is for them to remove the weigh station and silos. That's just a fact.

They shouldn't have been put there in the first place. And also, you know, your issue that I'm surrounded by farming - I'm a farmer too and prior to this all going in we didn't have any health issues. We had a good healthy life there. So we just ask that the Court really consider this, our view and before you do something new you have to take care of the old business and they were put there - their use was illegal.

Mick Jacobs, 3980 Saddler Ln: And the other thing that you raised about the neighbors, I'm Mick Jacobs - I'm just down there on Saddler Ln - if you do get this split, our concern - we already had Jantz who was scary enough - we split it now we're talking about two different neighbors as opposed to possibly just one. Local or not, you hope maybe one of them is good but what are our chances that both of them are going to be good? That's one of our major concerns.

Commissioner Wilson: Okay, any other rebuttal? Hearing none, we will close the public portion of testimony, no further public testimony can be heard after this point unless the hearing is reopened or continued. Now we will go to deliberation. Don- for us.

Commissioner Hodge: Well after reading this and then listening to the opening statements and listening to Stephanie and reading the letter from Stephanie that she researched the ruling back in 2016, I think it was, that she talked about, at this time I have no reason to override the Planning Commission. Right now my decision is to stay with the Planning Commission's decision and confirm their decision. You tell me what you think.

Commissioner Wilson: I feel kind of the right way and I just want to say on the record so that you guys understand, I live on a farm too and sometimes, even though I live on a farm, I was really happy when the neighbor about 20 feet away finally put some gravel on his ditch bank so I didn't eat dirt all the time; but, when you live out of town you're going to get some of that. It seems to me the issue is, and I don't think it's that no one cares about the neighborhood or the community, so things like, Mick, who knows when you sell your property, I mean you get old and retire and want to sell you don't have to go and get permission from all the neighbors to choose your neighbor. They're all concerns but, you know, most people if they're going to spend the money that these two properties will probably bring - I'm in real estate so - if I was going to invest that much money to buy one of those properties I would take care of it and therefore I'd probably be a good neighbor. A lot of it is based on Mr. Jantz's use of it and I think, that's really not - this issue is for whether or not that non-farm partition should be granted and that fits the same criteria that; I was on the Planning Commission for 12-14 years and we scrutinized a lot of these and legally it's allowable. I'm at ease too with Stephanie saying that the County Court will let the new owner, or the current owner of the farm that remains - give them a definition of what's commercial activity or not. To my knowledge, I'm not an expert, you don't have to get a conditional use permit to put your own corn dryer in; those are allowed with farm practices. I'm not convinced, and with staff report, that it was an illegal use so therefore we can't split this off until that's done. I think all those questions have been answered. The good thing is you'll probably hopefully have a lot better neighbor than Mr. Jantz that caused the problems on the other. I just don't see anything new that I would overturn the Planning Commission on.

Commissioner Hodge: Me either.

Commissioner Wilson: They were solid in their, what was it, 8-1 so that's pretty, they all thought likewise so I would

Commissioner Hodge: At this time I'd make a motion that we continue with the Planning Commission's decision to grant the partition.

Ms. Williams: It would be a tentative decision and in two week's we will come back with a finding document.

Commissioner Hodge: Tentative.

Commissioner Wilson: Right.

Commissioner Hodge: So you all know where we stand as of now.

Commissioner Wilson: So your motion is tentatively with the findings to be provided in a couple of weeks. I would second that. All in favor.

Commissioner Hodge: Aye.

Commissioner Wilson: Aye.

General discussion about the matter continued between those present and with the Court members.

COURT ADJOURNMENT

The meeting was adjourned.