

UMATILLA COUNTY BOARD OF COMMISSIONERS
Meeting of Thursday, April 21, 2011
1:30 p.m., Room 114, County Courthouse, 216 SE 4th St
Pendleton, Oregon

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COMMISSIONERS PRESENT: Dennis Doherty, Larry Givens, Bill Hansell.
ABSENT: None.
COUNTY COUNSEL: Doug Olsen.
STAFF: Heather Haueter, Tamra Mabbott.

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CALL TO ORDER:

Commissioner Hansell called the meeting to order at 1:32 p.m. and read the opening statement.

NEW HEARING:

COMPREHENSIVE PLAN AMENDMENT #P-102-10, ZONING MAP AMENDMENT #Z-293-10 AND TEXT AMENDMENT #T-10-041; Dennis & Deborah Davis, applicants/property owners. REQUEST is to rezone 50 acres of farm ground for rural residential use. The property is located at the intersection of McKay Drive and Lake Drive, approximately two miles south of Pendleton, and is identified as Tax Lot #100 of Assessor’s Map #2N 32 27. The current zoning is Exclusive Farm Use-160 acre minimum lot size; proposed zoning is Rural Residential-10 acre minimum lot size. Approval of the Plan and Zone Amendment also requires approval of an exception to Statewide Planning Goal 3, preservation of farmland. Applicable criteria include UCDO Section 152.750-152.755 Amendments and Oregon Administrative Rules 660-004-0018-0022

Staff explained that Exhibits #1-15 were in the Board’s notebook, received prior to the hearing. Exhibit # 16 was a letter from Doris Glover, #17 was a letter from Tom Kennedy, #18 was a letter from citizens in opposition, with attachments, #19 was a letter from Amy and Mark Dickey, and #20 was a letter from Mark Dickey.

Commissioner Doherty asked if it was appropriate to accept the draft minutes from the Planning Commission to the record. Staff explained that the minutes were informational and that adding them to the record was not approving them. They would still have to be formally adopted by the Planning Commission at their next meeting. Commissioner Givens moved adoption of all exhibits except # 15, the minutes of the Planning Commission. They would await confirmation from County Counsel, who would arrive shortly, as to whether they could be part of the record. Commissioner Doherty seconded. Motion carried.

STAFF REPORT:

Planning Director Tamra Mabbott presented the staff report. Ms. Mabbott summarized the request noting that the Planning Commission had denied it at their March 24th meeting with a vote of 6:1. The proposal requires an exception to Statewide Planning Goal 3. No additional findings were added by staff to the Planning Commission decision. The burden is on the applicant to prove that they meet the applicable rules. There was analysis in the Board's packets from the applicant, as well as from the state.

Ms. Mabbott indicated the property on a map, noting non-farm dwelling parcels that had been taken out previously. Commissioner Hansell asked where the urban growth boundary was. Ms. Mabbott explained that it is very north of the property and not on the same map. The area to the west and south of the subject area is zoned RR-2. An exception had been taken 30 years ago for that area.

Commissioner Hansell called for abstentions or objections to the jurisdiction of the Board. There were none.

Commissioner Hansell asked County Counsel Doug Olsen upon his arrival about accepting the draft minutes, Exhibit #15 to the record. Mr. Olsen confirmed that they could be part of the record. Commissioner Givens moved to add Exhibit #15. Commissioner Doherty seconded. Motion carried.

APPLICANT/PROPONENT TESTIMONY:

Doug Hojem. PO Box 218, Pendleton, OR. Mr. Hojem represented the applicants as their attorney, with Corey Byler Rew. He addressed county policy on rural development, reading from the Development Code purpose described in 152.160 of the RR-10 zone.

The rural residential zones are available with the goal of providing rural lifestyle living, allowing flexibility of housing type design, and accommodating citizen desire to as many income groups as possible. Mr. Hojem believed that the application furthered those policies.

Mr. Hojem explained that the property is located 2.2 miles south of Pendleton city limits. The proposal would affect 50 acres of the whole parcel with 168 acres remaining in EFU zoning. The 50 acre area is bordered on two sides by residential development, and access roads are paved. There are 132 residential lots averaging 1.6 acres.

Soils are class III. The applicants have not maintained that the parcel cannot be farmed; just that the 50 acre portion is of the lowest quality as compared to the rest of the property. It has a western exposure so is hit by prevailing winds and full sun. The topography includes a ridgeline and an area in the southeast corner with a steep bluff. The erosion terrace is not being farmed and soils are shallow.

Fire protection is from District 6 Riverside. Nearby schools include Sunridge Middle School and McKay Elementary.

Mr. Hojem passed out photos from the applicants' Exhibit F, explaining the location of the photos in relation to the property.

Mr. Hojem explained the exceptions analysis. The purpose of Goal 3 is to protect farm land. To seek a change, statute requires that certain criteria are met:

- 1.) Reasons why state policy should not apply.
- 2.) Whether there are lands available that do not require a new exception.
- 3.) Whether long term consequences are significantly more adverse than at another location.
- 4.) Whether the proposed use is compatible with adjacent uses.

Mr. Hojem explained that whether or not the land is productive is not part of the criteria. The applicant is not saying the subject area is not productive, but soils are class III and IV and these are the least productive soils on the parcel.

Criterion 1: Mr. Hojem argued that the jurisdiction can justify the need by determining that the rural location is necessary to accommodate the housing need. He noted there would be testimony about market demand. Pendleton realtor Vicki Dick had spoken at the Planning Commission meeting, but could not be present today. He reviewed her written testimony, which stated a lack of housing at all levels. Cayuse executives are living in Walla Walla because there is not acceptable housing in Pendleton. The hospital is also looking for 8-10 doctors who will need housing, and the hospital should also be moving forward with relocation. About half of the hospital's candidates have indicated they are looking for small acreage within close proximity of town. The subject property piece fits a niche. It is very marketable, close to town, is accessed by paved roads, and utilities are close.

Mr. Hojem continued that the subject area contains steeper, less quality parts of the property, and is close to amenities and schools. He referred to the RR-10 amendment for the Kennedy/Wood property in the Hermiston area. A table was adopted in the proceeding of an inventory of rural lands, which found that there are over 1 million acres of rural land in private ownership, with only a very small portion in rural residential zoning. The county is not facing a situation of rampant loss of farm ground. The parcel is also adjacent to existing rural development.

Criterion 2: Other areas cannot reasonably accommodate the use. This is whether there is an inventory that meets the need. Need is met with inventory, not just one lot here or there. The Davis development won't happen right away. The rezone requires a partition process later. What the county needs is lands that are available and coming available.

Mr. Hojem noted that page 14 of his narrative talks more about need. There is a new submission from Mr. Dickey about other parcels in the county, but otherwise there has been no other submission of property that meets the need.

Criterion 3: Long term consequences. The only argument environmentally is that there are concerns with wells. It is not about whether there is an impact, but if it will be worse than any other area. They are only proposing to rezone 50 acres out of over 1 million. He would argue that there is actually a positive economic impact.

There would be no adverse social impact. The area is abutted on two sides by residential development and they are only proposing five new lots.

The only energy consequences would be the commute time and fuels to drive to town. No one has addressed a location elsewhere that would be better. This does not require a detailed study. There is already dense residential property adjacent and they would be adding only five more units of less dense property. He couldn't think of a better location.

Criterion 4: Compatible with other adjacent uses. It cannot be argued that it would be incompatible when there are already rural residential zoned lands on two sides. It is not incompatible just because people don't want development next door. Mr. Hojem also noted a case for an irrevocably committed exception, where the land is already committed to a certain use, as in the relationship of the subject area to surrounding lands. He was not saying that it is irrevocably committed, but it is committed to a residential center.

As far as county criteria, Mr. Hojem submitted that the purpose for the RR-10 zone is furthered by this application. It provides an opportunity for rural residential housing units. Statewide policy is that development be located near a rural residential center. The subject property furthers the need and is perfect for this type of development.

Jef Farley. PO Box 23, Pendleton, OR. Mr. Farley is a real estate broker and owner with Coldwell Banker. He grew up in Pendleton and is part of the Pendleton Housing Committee. Through a grant from the state of Oregon, Oregon Solutions is trying to figure out what is going on with housing in Pendleton. One of the processes was to physically look at all land for sale or that could be developed in the city of Pendleton. At the executive level there are only about six lots within the city limits.

Mr. Farley explained that housing is an integral component of growth. About half the people looking to move into the area and establish businesses are looking for acreage. The inventory for the last 30 years has been picked over and the UGB is restrictive.

The subject property would be accessed by paved roads, and is adjacent to existing residential. Mr. Farley had concerns about land use laws because there has to be some built in flexibility to adapt with the times and keep the economy healthy and the livability of the community prosperous. Beyond this parcel, this type of zoning should be looked at in other areas, as the supply is down to nothing. Good common sense locations are practical.

Other specific locations have been submitted as other options, but they are limited. The county needs a selection because each site will have specific positive and negative attributes. The limited supply is hampering economic opportunities.

A housing study currently under way in Pendleton has revealed that the stock in Pendleton is ancient. The average home was built in the mid 1950s, which makes it hard to attract buyers.

There was discussion about limited quality and quantity of housing, and the problem of blight. Commissioner Doherty asked if the housing committee is doing anything to deal with the issue of blight. Mr. Farley replied that they are not specifically working on that, but the city does have a demolition grant. The challenge is that the city just has not experienced any growth. We need an economic thrust to handle those types of problems. The best example is that schools are shrinking and the median age is increasing.

Gary Zollman. Mr. Zollman owns Zollman's Larry Burd Well Drilling. He is on the Board for the Oregon Groundwater Association and his company has been in business for over 45 years in this area, having drilled just less than 50% of the wells in the area near the subject property. There have been 118 recorded wells in the area since 1957 and only four have had to be deepened or repaired.

Mr. Zollman explained the minute amount of water used for domestic wells and noted that, in studying and drilling in the subject area, the water has been in the same aquifer and the static water level has been stable.

Commissioner Hansell noted that domestic wells allows for irrigation of ½ acre. He wondered how the balance of the 10 acre parcels would be irrigated and asked if there were any available water rights that could be applied to this property. Mr. Hojem replied that the Davis' have a water right for irrigation only on the east portion of the property.

There was discussion about how the other 9 ½ acres would be irrigated and how livestock could affect the situation on non-irrigated lands.

Mr. Zollman submitted a well log query. Commissioner Givens moved to add it to the record as Exhibit #21. Commissioner Doherty seconded. Motion carried.

Debra Davis. 71706 Tutuilla Creek Road, Pendleton, OR. Mrs. Davis and her husband Dennis are the applicants, and have owned the subject property for nearly 20 years. They have come to appreciate Pendleton and the countryside very much. They sold two smaller parcels off in the past, and were approached by others who want to buy property in that area. They decided to divide the least productive land so others can enjoy. RR-10 allows people to have a home and small farm, and maintains the open space that is desired. The community needs good jobs and economic growth, and the potential home sites would be favorable for a rural residential lifestyle.

Commissioner Hansell asked about water rights to the subject area. Mr. Hojem explained that there is a water right on the eastern side of parcel. Commissioner Givens asked if they'd considered selling the rights to the subject area. Mrs. Davis replied that they don't intend to sell the rights because they will be farming the remaining ground.

Robert Rose. 71462 SW Lake Drive, Pendleton, OR. Mr. Rose explained that he has lived on Lake Drive longer than anyone there. His testimony was neutral, but he wanted to note a few items.

First is an area between the two existing partitions, which has been prone to flooding in the past. Second, there would only be ½ acre of water for 10 acres. The parcels will end up in the summer with dry pasture, dust, and weeds. He wondered who will manage weed control, which is the biggest problem out there.

Mr. Rose also noted that there are six houses with acreage for sale out there right now. He pointed out that it is common for people to move out there to just one acre and then realize that the acreage is more than they want to deal with. What will happen with 10 acres?

Opponent Testimony:

John Williams. 71687 Lake Drive, Pendleton, OR. Mr. Williams testified as spokesperson for other neighbors in opposition. He believed the question should be based on the merits of whether the land is farmable. His letter included farming records showing that the subject parcel is farmable and productive. He believed that was important. He also included an email from Jim Duff who farmed the land successfully previously.

Mr. Williams submitted that if this property is rezoned and subdivided, it will open up the entire 36,000 acres of the county's EFU for rezoning. He also pointed out that at the Planning Commission meeting the state also expressed opposition.

Commissioner Doherty asked about Mr. Williams' testimony from the Planning Commission regarding land use findings that would restrict the partition. Mr. Williams explained that when he and his wife were looking for housing they were shown findings which indicated that the property they were looking to buy would not have additional partitions nearby in the future. They went ahead and purchased the property where they currently live believing that there would be no further development around them. They were informed such by County Planning as well. Commissioner Doherty asked if Mr. Williams felt there is not a need. Mr. Williams replied that he knows people who have not moved here for reasons other than lack of available residential acreage.

Commissioner Doherty noted that Mr. Williams is a hydrologist. Mr. Williams explained that he is not certified. Water is a concern, but he did not have any numbers to show that more wells will draw down the water table.

Commissioner Doherty asked how the rezone and subsequent partition would affect or bother Mr. Williams and if it would make a difference if water were available to the entire 50 acres. Mr. Williams replied that it would mostly affect his view. But he agreed with Mr. Rose about weed control issues. He keeps his own property up, but wants to be able to keep it that way.

Warren Stewart. 71104 Tutuilla Creek Rd, Pendleton, OR. Mr. Stewart lives 1 ½ mi southeast of the subject property. His concern was mostly related to water. If there is only ½ acre for 10 acres, that amounts to weeds. They already fight them constantly. He was also worried about dropping the water table. He has had troubles with his own well and stated that it would be hard to convince him that the water table isn't falling.

Mr. Stewart had concerns about the road as well. McKay Drive has an extreme corner at the site of the propose rezone and there are several wrecks there every year. It already generates quite a bit of traffic and more homes mean more traffic.

Don Jaeger. 71176 Tutuilla Creek Rd, Pendleton, OR. Mr. Jaeger lives within 300 yards of the subject area. He was concerned with water and traffic. He feels there is plenty of property that can already be developed in the county and within the city. You have to have buyers and it is not a buyers market.

Mr. Jaeger noted that two parcels have already been divided off of the subject property and he felt that development should stay within Pendleton's UGB.

Lloyd Rhinhart. PO Box 658, Pilot Rock, OR. Mr. Rhinhart is a wheat farmer and owns property north of the subject property. Oregon's goal is to preserve farm land. With populations expected to double there has to be some place to grow crops. He raises about 45-60 bushels per acre on his property. It is essential to preserve the land and you have to draw the line somewhere. He noted there is other land available to develop.

Mr. Rhinhart stated that more houses make more traffic and Sheriff Trumbo has already said that Tutuilla Road is the most dangerous in the county. It also takes a lot of water to keep up 10 acres.

Mark Dickey. 71669 Lake Drive, Pendleton, OR. Mr. Dickey and his wife own property on the south boundary of subject area. When they purchased their home they had the understanding that there would be no more development. He noted that their property also was on the market for most of 2 years.

Mr. Dickey referred to the exhibit he submitted previously, explaining that he tried to address the issues relative to criteria:

Inventory – Mr. Dickey provided a list of properties currently available. He referred to the Perkins exception in 2005, south of the reservoir. Those three lots are still available with a good view and flat area for building. There is another 12.6 acres just south of Pilot Rock that is also available, as well as 24 acres just above McKay School. Inventory wise, the rules ask if there are other properties available, not how much.

Economic benefits – Mr. Dickey pointed out that five lots would not create much of an economic benefit, especially considering that the subject property has been able to 40-45 bushels per acre.

Mr. Dickey noted that alternate sites were not addressed at the Planning Commission, but they were discussed for the Board. He did not feel that it is irrevocably committed and basing that on the fact that it abuts other residential zoned lands does not warrant.

The applicants referred over and over to economic benefits, but continued farming should far outweigh the one time sale of the land, and it would have a negative effect for the community as a whole.

Rural residential development is a justified exception if determined that the rural development is necessary to generate economic activities. The jurisdiction must make determination that this would meet the "necessary" demand. The other properties on the market and length of time other properties have been on market would indicate that it is not necessary. It seems that Pendleton is more in need of affordable housing.

Also, the Perkins exception findings state that there was need, but three of those five lots are still standing undeveloped. The realtor spoke of need to such extent as to be necessary to take farm ground out of use, but will five lots meet that need? The Perkins lots have been available since 2005, and others have been available long term as well.

Mr. Dickey noted the problem with weeds that they already have to deal with. His submittal included a letter from Carl Haglen who does crop dusting and herbicide application.

It appears that it is the applicant's burden to meet criteria and convince the Board that they have been met. Mr. Dickey argued that information provided indicates they have not been met.

Mr. Dickey noted several executive homes available near the college, as well as lots. He has lived in the Pendleton area since 1973 and the population has been stagnant. He did not see how five more lots would help. We need businesses and affordable housing.

Heaven Doherty provided MLS sheets for other lots currently for sale. Mr. Dickey explained that Ms. Doherty was a realtor who had to quite because there was just not enough going on with the market.

Commissioner Givens moved to add the MLS sheets to the record as Exhibit #22. Commissioner Doherty seconded. Motion carried.

Rebuttal Testimony:

Mr. Hojem rebutted, beginning with weeds. There is no reason to assume that people buying the lots will not be as nice as Mr. Williams and Mr. Dickey whose lots are clean.

Mr. Hojem then addressed the question of lot availability, explaining that they are talking about need and making housing available. You don't wait until it's all sold and then look

to make more. Realtors have testified and talking about certain types of buyers. The benefit is that if you fill that need those people will come and bring new businesses.

Mr. Hojem noted that Mr. Williams argued that the application should be judged on whether the land is farmable, but that is not the criteria. If that were the rule there would never be an exception anywhere.

As far as the road, the public works director has said that there would be no significant impact. Based on the number of dwellings already there, five additional lots would only add 3% more traffic.

Mr. Hojem referred to Mr. Rhinhart's testimony regarding preservation of farmland. He didn't disagree, but criteria also don't prohibit the proposal. Some of the land mentioned as available for development is not immediately available because development is approved under Measure 49, but has not been partitioned.

Mr. Dickey sited several specific properties available, but it is not a question of one or two, or three. There are reasons why properties are not attractive and there are not enough choices to attract people here.

Mr. Dickey also talked about water rights. Mr. Hojem had talked to Oregon Water Resources Department and they have no concerns about an additional five domestic wells.

The houses by the college are urban, but this proposal is to provide rural housing. Mr. Dickey claims five houses will not "save the bacon" but who knows. Businesses are not coming due to lack of housing and this is an opportunity to make it available.

Commissioner Doherty noted a reference to an artesian well and asked if it had enough right to transfer surplus to the proposed area. Mr. Davis replied that there is an artesian well, used mostly for domestic water, but it would not be adequate for transfer. Mr. Hojem referred to his Exhibit E which shows the irrigation area and rights.

Gary Rhinhart explained some of the history of the property and how it came to its present configuration. He felt better farming practices would make it more productive. Mr. Hojem did not think history had any bearing on the criteria.

Commissioner Hansell commented that he was not aware of any time when LDCD has changed their stance in an issue upon appeal and it is very clear that they oppose. Mr. Hojem replied that they did have a written statement from DLCD and he had filed a rebuttal, but had received nothing contradicting his rebuttal. He believed it was not a major issue to the state or they would be present today. He would submit that they have a good claim for a Goal 3 exception.

Commissioner Hansell asked about the appeal process. Mr. Olsen explained that the decision can be appealed to the Land Use Board of Appeals (LUBA).

Commissioner Hansell called for a short recess.

The hearing was reconvened at 4:27 p.m.

Hearing Closed; Deliberation and Decision:

Commissioner Givens noted a lot of issues with the proposal. There is a need for available housing, but he questioned if 10 acres is affordable to most people.

We also have to look at the historical perspective too. It was brought up earlier that there are a lot of people who are commuting. He was concerned that downtown Pendleton has an issue with lack of retail customers. There are also zoning issues between Oregon and Washington and you can see that difference along Stateline. You see a lot of executive parcels in Washington that end up with irrigation issues. Commissioner Givens noted that water resources does not monitor wells and people end up using much more than the allotment. Unfortunately, nothing happens until neighbors complain.

50 acres rezoned for 10 acre parcels might be able to sell right away or may not. We cannot judge the feasibility and saleability. We have a lot of other farm lands up against residential. Supposedly it won't impact farming, but it always does.

Commissioner Givens acknowledged that the public works director did not see a huge impact to roads, but there could potentially be. There are also utilities nearby, but there could be issues with each additional septic and nitrates. We don't want to take the chance of increasing nitrates. The Board has to look out for rights of the citizens as a whole.

Commissioner Givens did not feel the increased tax base from expensive homes would cover the cost of increased services to the area. The rezone adds potential to create problems that cannot be addressed adequately. He did not support a rezone.

Commissioner Doherty explained that he had gone through the record as best he could, noting a lot of effort and heart put in on both sides. He pointed out that the applicant has the burden of meeting the criteria, and if met it doesn't necessarily mean that approval is granted. Farmability is not determinative for him. He was more concerned with whether criteria are met and does the board want to go there.

Commissioner Doherty noted the reference to the Kennedy/Wood rezone in Hermiston. It was the first matter where he actively considered a rezone. He made a point about the process and that how he intended to analyze the case was balancing and weighing, not just hearing competing opinions. The first real legal issue is burden of proof. But those opposing also have to be accountable to provide appropriate facts. There are four issues in this case that he really wrestled with.

First was the water issue because of the different opinions. It would be a lot easier to support an exception if there were more water. The idea of having to limit water to ½

acre is not attractive because you end up with 9 acres of dirt and weeds. In the Kennedy/Woods case they had water. If economic development is the goal, the land is better in farm production than with five houses.

Second is the issue of need. Commissioner Doherty did not doubt that the Pendleton area needs executive parcels. It would help market the area, but how compelling is that need. The 6:1 vote by the Planning Commission against the exception indicates that it is not compelling enough, and he wasn't convinced that it is either.

Third is the potential appeal to LUBA. LDCD had a lot of points to pursue an overturn of exception.

Fourth is concern about the county changing the rules on a legislative action. It is true that prior exceptions were granted and people bought their property relying on the understanding that there would be no more development. While that does not prevent change now, it presents bad faith in the county.

Commissioner Doherty would not support the rezone for these reasons. He was not expressing judgment in the value and motivation of the application.

Commissioner Hansell commended the application and the appeal. The county can make an exception when appropriate. However, after consideration, he did not believe this to be the appropriate time or request to vote in favor of.

Neighbors oppose it universally, LCDC opposes it, and the Planning Commission opposes it. There are no water rights available to maintain 10 acres, and it is not appropriate to take productive ground out of production if there is not a compelling reason to do so. He would vote denial of the application.

Commissioner Doherty moved to uphold the decision of the Planning Commission and deny the application. Commissioner Givens seconded. Motion carried.

ADJOURNMENT:

The meeting was adjourned at 4:50 p.m.

Respectfully submitted,

Heather Haueter
Secretary

(adopted by Board of Commissioners on June 14, 2011)