

**UMATILLA COUNTY PLANNING COMMISSION**  
**Meeting of Thursday, March 24, 2011**  
**6:30 p.m., Umatilla County Justice Center, Media Room**  
**Pendleton, Oregon**

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**COMMISSIONERS**

**PRESENT:** Gary Rhinhart, Frank Kaminski, David Lynde, Clinton Reeder, Randy Randall, David Lee, John Standley.

**ABSENT:** Don Wysocki, Tammie Williams.

**STAFF:** Tamra Mabbott, Carol Johnson, Gina Miller.

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**NOTE: THE FOLLOWING IS A SUMMARY OF THE MEETING. A RECORDING OF THE MEETING IS AVAILABLE AT THE PLANNING DEPARTMENT OFFICE.**

**CALL TO ORDER:**

Chairman Rhinhart called the meeting to order at 6:30 p.m. He read the opening statement.

**APPROVAL OF MINUTES:**

Chairman Rhinhart asked if members of the Planning Commission had reviewed the minutes from December 16, 2010 and February 24, 2011. There were no corrections or additions, and the minutes were approved by consensus.

**NEW HEARING:**

- **CONDITIONAL USE REQUEST, #C-1178-11;** Richard Misener, applicant/property owner. REQUEST is for approval of a temporary hardship mobile home for an older gentleman. The property is located at 1955 S Ott Road, Hermiston, Oregon, and is identified as Tax Lot #1400 of Assessor’s Map #4N 29 18. A hardship dwelling is allowed in the EFU Zone under Section 152.060(J) of the Umatilla County Development Ordinance (UCDO). The criteria of approval are found in UCDO Sections 152.576, 152.061, 152.059 (K) (IX), 152.013 & 152.615 and OAR 660-033-0130 (5) & (10).

Chairman Rhinhart called for abstentions, and there were no abstentions or objections to the jurisdiction of the Planning Commission. Chairman Rhinhart read the opening statement and called for the staff report.

**Staff Report:** Carol Johnson, Senior Planner, presented the staff report. The applicant, Richard Misener, owns a 22 acre parcel of EFU (Exclusive Farm Use) land on Ott Road. A map showing the location of the subject parcel was pointed out in the information packets. The Miseners have been providing assistance to a 72 year old gentleman, who is

not a relative of theirs. They submitted an application for a hardship dwelling, and requested that the application be directed to the Planning Commission. Mrs. Johnson explained that in the EFU zone, a hardship dwelling is permitted through a Conditional Use Permit for a resident or a relative of a resident, as detailed in Umatilla County Development Code ( UCDC ) 152.060 (J). Mrs. Johnson advised that all responses to the applicable criteria were identified in the staff report. Staff found that the applicant's request to establish a hardship home for a non-relative person did not meet the criteria. A representative from the Department of Land Conservation and Development (DLCD), Grant Young, submitted written comments. Comments from Mr. Young indicated that the state rule advises that this use may only be granted to a resident or a relative of a resident, and that this is a local land use decision.

Mrs. Johnson explained that the Planning Commission had three options, as outlined in the March 17<sup>th</sup> memo before them. The first option was to continue the hearing, the second option was to approve the application with conditions, and the third option was to deny the application. Due to the time frame circumstances being close to the 150-day limit, staff would prefer not to continue the hearing.

Commissioner Kaminski asked Mrs. Johnson if the staff ever verified the identity of the other hardship applicants. Mrs. Johnson explained that in the case of medical hardships, documentation is requested from the physician of the person requiring assistance. She noted that no medical documentation had been submitted with this application.

Commissioner Lynde asked for a clarification on the term "resident", as used in the administrative rule. She advised that she could not provide further definition for this word in this instance. Mrs. Johnson also noted that the Miseners had submitted a previous application for a farm labor dwelling, and were not able to meet the criteria for that dwelling. They withdrew that application and re-submitted the application for a Conditional Use Permit for a hardship home.

Commissioner Reeder stated that the comments from the DLCD indicated that this ultimately was a local land use decision, leaving discretion for the Planning Commission to make a decision.

**Applicant Testimony:** Richard and Michelle Misener presented testimony. The gentleman they are trying to assist is 72 years old, and they have known him for 26 years. He is a Vietnam era veteran, and she is a nurse that works with soldiers coming home from active duty with Post Traumatic Stress Disorder (PTSD). Mrs. Misener explained that this gentleman had burned all his bridges, and had no resources. They agreed to help take care of this man. He has almost died of kidney failure in the past, and most likely is still alive today due to their intervention and care. He has been living in their home for the last two years.

Commissioner Kaminski asked why they wanted to have this man move out of their home after all this time. Mrs. Misener explained that she wants to have her home back. She has been out of state on active duty for the last six years and now that she has

returned, she would like to have this man move nearby so she can have her kitchen and home back.

Mr. Misener commented that he has reviewed all the administrative rules and land use statutes, and he contended that the rules do not specify who the occupant of the hardship home has to be. He stated that the hardship is actually for them as they are caring for this man. They are caring for an aged and infirm person, according to the statute.

Commissioner Kaminski commended the Miseners for wanting to care for this man, but asked if they had tried to find alternative care and housing for him. Mrs. Misener commented that this man loves horses, and this makes him happy. They cannot find other housing for him that will also accommodate his horses. By keeping him with them on their property, he can keep his horses and continue to care for them and retain his dignity. Due to medical disabilities, he is not able to ride horses any longer. Mr. Misener stated that the work done around their property is more for the dignity and benefit of the gentleman than it is for their needs. They understand the temporary nature of this hardship home. Mrs. Mabbott explained the annual review process. Further discussion followed on additional reasons on why the Miseners are seeking to establish a temporary residence nearby for this man.

**Opponent Testimony:** none offered.

**Agency Testimony:** Grant Young, DLCD, 105 1<sup>st</sup> St. Suite 210, La Grande, OR. Mr. Young asked to clarify the administrative rule applicable to this application that has been tested in case law. The statute and administrative rule is very clear that a hardship home is for the resident or a relative of the resident to provide care for the other. This is a quasi-judicial decision for the Planning Commission and it will be up to them to make that decision.

**Rebuttal:** none offered.

**Hearing Closed; Deliberation and Decision:** Chairman Rhinhart closed the hearing and continued onto deliberation.

Discussion followed on whether or not to approve this application. Commissioner Lee and Commissioner Kaminski commented that they support this application for the fact that the Miseners are assisting a Vietnam veteran. Commissioner Kaminski commented that while he is sympathetic to the reasons behind the application, he also felt that the Planning Commission would be extending their interpretation of the administrative rule a long ways to allow this non-relative a hardship home.

Commissioner Lynde read from the ordinance a section pertaining to the hardship home being allowed for care of the aged or infirm. He felt that this would apply to this situation. He stated that since this gentleman had lived there already for two years, he qualified as a resident. Commissioner Kaminski commented that this could set a precedent for allowing a wife to establish a hardship home on the property if they were to

divorce. Discussion followed on the problems for the county that this precedent could potentially cause if allowed.

Commissioner Randall commented that DLCD has identified this as a local decision for Umatilla County. He felt that the applicants understand that this would be a temporary permit, and that none of the surrounding property owners responded to the public notice. He also agrees that the gentleman is a resident. Commissioner Kaminski commented that they should not rely too much upon this interpretation of the administrative rule, because any family member could qualify as a resident. This should be considered a very small part of the decision process.

Chairman Rhinhart stated that his concern about this application is that hardship homes have historically been abused and caused substantial problems for the county.

Mrs. Johnson advised the Planning Commission that if they did move to approve the application, they would need to state the conditions as found in the staff report.

Commissioner Standley moved to approve Conditional Use Permit #C-1178-11, including the precedent and subsequent conditions as found on page 20 of the staff report. This permit will be solely for the use of the resident of the temporary hardship home, Donald J. "Jack" O'Brien. Commissioner Reeder stated that he concurs with the resident status, and finds that Mrs. Michener's position as a military nurse uniquely qualifies them to care for Mr. O'Brien. He seconded the motion to approve the application. Question called. Motion carried 7:0.

#### **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**

Chairman Rhinhart read the opening statement for a legislative hearing. The Planning Commission will be considering whether or not to make a recommendation on this application to the Board of Commissioners on April 21, 2011 at 1:30 p.m. Chairman Rhinhart called for any abstentions, ex-parte contact, or conflicts of interest. He disclosed that his brother owns a parcel of land that adjoins the subject parcel and he is willing to abstain from this decision. He stated that he does not have any financial

interest in his brother's property. The Planning Commission found that Chairman Rhinhart could remain impartial and would not have to abstain from the hearing.

Commissioner Kaminski asked for a few minutes to review the letters submitted that evening.

**Staff Report:** Tamra Mabbott, Planning Director, presented the staff report. She explained the materials in the information packets; a memo outlining the application, a map of the area and adjacent land owners, and a narrative and declaration from the applicant dated October 11<sup>th</sup>. Mrs. Mabbott also displayed some oversized exhibits from the applicant. Letters from attorney Doug Hojem, Grant Young, DLCD, and Lloyd Rhinhart were also introduced.

Commissioner Reeder moved to accept the new letters received tonight into the record as Exhibit 11 and Exhibit 12. Commissioner Lynde seconded the motion. Motion carried by consensus.

Mrs. Mabbott explained that this application is a legislative matter, so she would not spend a great deal of time outlining if the application meets or does not meet the standards. The applicant must make their case. In her memo, she described the parcel and tried to bring out a few details that the Planning Commission would need to know that were not covered in the application. Mrs. Mabbott referenced the map on the screen to show the subject parcel, and covered the history of land use decisions for this property. The proposed re-zone is only 50 acres of the subject parcel.

Commissioner Lee asked how much of the parcel was able to be farmed, and Mrs. Mabbott explained that this was for the Planning Commission to decide. She explained that the soils are not high value, but not unable to be farmed. The soils are Class 2 and 3, and considered to be farm ground. There are no water rights on the 50 acres named in the application. The applicant is not proposing to apply for new water rights, but if the re-zone and partition were allowed, they would utilize the option of installing an exempt well for each of the five proposed parcels.

Mrs. Mabbott advised the Planning Commission that their decision tonight was to decide on a recommendation to the Board of Commissioners on a legislative matter, whether or not to allow a 50-acre parcel to be re-zoned to a residential zone from agricultural EFU (Exclusive Farm Use) zoning. The configuration of the 5 10-acre lots would come later with a partition or sub-division application.

Mrs. Mabbott said she had received a letter from the Water Master, Tony Justus, on this matter. The letter confirmed that the applicant could utilize exempt wells if the application were allowed. With an exempt well, the property owner could potentially irrigate up to a half acre of land per parcel. The property owner could also apply for a new water right, but they are within 5 miles of a municipal well of the city of Pendleton. Mrs. Mabbott explained that it is highly unlikely that Pendleton would support any more water rights being granted that close to their well. Mrs. Mabbott clarified the

information about water rights exemption for stock watering according to the letter from Mr. Justus. According to Mr. Justus, the exempt well would allow a home site 15,000 gallons of water per day for domestic use, and 5,000 gallons a day for stock watering.

Commissioner Kaminski asked what the relationship was between the potential of the 10-acre lots and what they were considering today. Mrs. Mabbott explained that the applicant would have to apply later for development. The only action being considered with this application was the re-zoning of the property.

Mrs. Mabbott stated that she did not address the issues of drainage, erosion and storm water runoff in this process, as those issues would have to be considered in any development that may occur later. She confirmed that the potential impact of these issues could be much greater as a result of residential development than if it were left in farm use.

Commissioner Reeder asked about potential nitrate contamination from the possible development of five new septic systems in this area. Chairman Rhinhart stated that they are already having this problem in the lower McKay Creek area.

Mrs. Mabbott explained that the application was to re-zone the 50-acre parcel from EFU to RR-10 (Rural Residential 10-acre) and to approve an exception to the Goal 3 Statewide Planning Goal. The applicant addressed the administrative rule for this exception extensively. The applicant must prove that this parcel no longer requires state resource protection and would be utilized better as residential ground. Mrs. Mabbott met with the Public Works Director regarding the traffic impact this development would potentially cause. Discussion followed on the sizes of adjoining parcels. Mrs. Mabbott stated that she included possible conditions in her memo that could be imposed, if the Planning Commission decided to recommend the application for approval. They could suggest conditions such as the requirement to participate in future road improvements and the requirement of water testing for future development.

Commissioner Don Wysocki was unable to attend the hearing, but wanted his written comments included in the record. Commissioner Wysocki has a PhD degree in soils science and works for the OSU Experiment Station. He wrote that the soils for the subject property are farmed economically elsewhere in the county with no difficulty.

Mrs. Mabbott asked to make one last point in regards to a letter received from opposition parties. The letter referenced a prior land use decision in 2002. Mrs. Mabbott confirmed that the reference was valid and true. Dennis Olson had written in findings from the 2002 application that the applicant knew that they could not partition the land any further. Mrs. Mabbott clarified that this would only be applicable if the land was EFU, and would not apply if the parcel was re-zoned to a residential zone.

Grant Young, DLCD, submitted written comments, and was present to provide testimony as well. The DLCD disagrees with the findings submitted by the applicant that the application complies with the Goal 2 exception requirements.

Commissioner Reeder asked about a paragraph in the applicant's findings about the relocation of St. Anthony's hospital to that area. Discussion followed on the issue that the county is not responsible for providing residential housing opportunities outside of the Urban Growth Area. Commissioner Standley asked for information about the public rights-of-way and easements. Mrs. Mabbott explained that the roads are public, not county maintained roads. The county is preparing to legalize and accept those roads, and do the maintenance. Commissioner Standley commented that the roads are very narrow, and this needs to be addressed in future development. Mrs. Mabbott said that they could impose a condition in the future development for road status.

**Applicant Testimony:** Doug Hojem, PO Box 218, Pendleton, OR, attorney for the applicant. They are present to request a zone change that requires a comprehensive plan and text amendment because the parcel is zoned EFU. They believe that the property is well suited for residential use with close proximity to the future site of the hospital relocation, and it is close to town and schools and other retail stores. A ridgeline separates the farm ground from the proposed residential area. The neighboring parcels to the west are small lots, with residential development. They are not bringing anything new to the area, as there are 172 established residential lots nearby.

Mr. Hojem spoke about the Class 3 soils on this parcel. They are not high value soils and this limits the types of crops that can be grown there according to the National Resource Conservation Service (NRCS). He was not saying that this parcel cannot be farmed. The property owner had testified that it is not very productive farm ground and in the past he has only been able to get 20 bushels per acre from this parcel. Re-zoning this parcel would not result in the loss of any valuable farm land. Mr. Hojem demonstrated with photos the parcel and the topography that prevents the property owner from farming this subject parcel effectively. There is a large 120 foot bluff and rocky outcroppings present on the subject parcel.

Fire protection is provided by District 6 and the station is 2.5 miles away. Sunridge Middle School is 2 miles away, and police protection is provided by Umatilla County Sheriff's Office. The subject parcel is near the proposed new site for the hospital. This would be the perfect place for a rural lifestyle, with convenient access to schools, services and downtown. He pointed this out to show that this parcel is not remotely located, far away from access to services in the middle of farm land.

Mr. Hojem presented his photo exhibits to the Planning Commission, and how it represented their application. They contend that this proposed development would serve as a buffer for dust and pesticides between the existing homes and the agricultural use of the remainder of the parcel and adjoining farms.

Mr. Hojem discussed the four factors of how their application meets the criteria for a Goal 3 exception; the Goal 3 policy does not apply to their application, whether other areas that do not require a new exception can accommodate the proposed use, whether the long term environmental/economic/social and energy consequences from the

proposed use are significantly more adverse than at another location that require a goal exception, and whether the proposed use is compatible with other adjacent uses.

Mr. Hojem discussed the first factor; reasons on why the state policy for Goal 3 exception for protecting agricultural ground should not apply. He stated that the letter from Grant Young, DLCD, says they cannot justify the goal exception on market demand for housing. Mr. Hojem commented that this is incorrect. He stated that an exception is allowed if the need for rural housing can be demonstrated. They will have a local realtor speak to this later. He agreed that the county does not have an obligation to provide housing, but this also does not mean that the Planning Commission can use that as a reason to deny their application. He stated that the housing demand created by the Barnhart Road extension, Cayuse Technologies, and the hospital expansion will satisfy the first factor. He discussed the Kennedy land use decision from several years ago, and quoted the percentages of farm land versus residential land in the county. This county is not like the west side of the state, where residential and commercial land use is encroaching on farm land. The county has plenty of farmland and will not miss 50 acres of poor soil farm ground.

The second factor was discussed; can any other area accommodate this type of use. Mr. Hojem referenced parcels on Jericho Lane and that these parcels do not qualify as accommodation for this type of use. He stated that his clients would be willing to enter into some agreement to widen the road if that was determined to be a factor for the Planning Commission to approve the application. Mr. Hojem referenced the letter from Grant Young, DLCD, and said that Mr. Young did not identify the undeveloped parcels he mentioned in his written comments. The city of Pendleton does not allow livestock, so he is talking about rural residential parcels only. They know of no other areas that can accommodate this specific use, when considering how close to town and convenient it would be for the kind of housing that is needed in this area.

Mr. Hojem talked about the third factor; long term environmental/economic/social and energy consequences, and the complications of putting this residential use where they are proposing to compare to another location of the same zone type. They believe there are none, because the area is already utilized as a residential use. The state regulations do not require a detailed evaluation of alternate sites, unless someone proposes another site. In fact, they see this as an energy conservation measure with the property proposed being so close to town; people will drive less back and forth. Socially there are no adverse consequences, as this is the "Round-Up" city, and people want to own a small farm. Mr. Hojem stated that they do not believe this proposed use will have any environmental consequences. The letter from Mr. Justice indicates that the Water Master did not have a problem with the proposed use. With 172 domestic wells in the area, he does not see how five more exempt wells will make any difference.

The fourth factor was discussed; is the proposed use compatible with the use of adjacent properties. Mr. Hojem commented that the applicant is compatible for the area. There are residential and agricultural uses on all sides of the subject property. They believe that allowing this proposal will promote compatibility of the existing uses, with the

subject parcel serving as a buffer zone between the large scale wheat farming on the east side and the current residential use on the west side.

Mr. Hojem asked the Planning Commission to consider an irrevocably committed exception. This exception reviews the relationship between the proposed exception area and lands adjacent to it. He confirms that farming can be done there, but since residential facilities are so convenient and close that they would want to further develop the residential use if this proposal is allowed.

Mr. Hojem discussed the Umatilla County criteria. He noted that the Planning Commission is not required to do anything about rural housing. There is a policy in Section 152.160 of the Umatilla County Development Code (UCDC) that states the purpose for the RR-10 zone. The purpose is designed to provide lands for rural living and maintain a rural residential atmosphere to accommodate the demand for the same. He states that this is the perfect place to utilize the RR-10 zone, close to town and residential areas already. The county needs additional housing and a need for economic growth. Mr. Hojem submitted that people are not coming to this area due to a lack of housing. They are requesting a positive recommendation from the Planning Commission to the Board of Commissioners.

Mr. Hojem responded to Mr. Young's letter in writing and asked that a copy be placed into the record. He also responded to the points brought up in the letter from the adjoining land owners opposing the proposal. He closed by stating that the area needs more housing and deserves the exemption from the state resource protection as farm ground.

Chairman Rhinhart commented that he knows the subject property, and the prior owner. He stated that the prior owner was able to farm the entire parcel, even the steep parts. He farms ground in the area and is able to make 60 bushels per acre nearby. Chairman Rhinhart states that the idea of having a buffer zone is not pertinent to the proposal as there is already a buffer zone.

Mr. Hojem stated that the soil class information they presented came from the county.

Commissioner Standley asked when the photos were taken, and Mr. Hojem replied they were taken in September 2010. Commissioner Standley noted that most of the properties have irrigation district access to keep their places green. He asked Mr. Hojem how the balance of the parcel will be affected. Mr. Hojem replied that the balance of the property will not be affected, and that the topography dictates what will be done with the land.

**Proponent Testimony:** Vicky Dick, 414 NW 11<sup>th</sup>, Pendleton, Or. Ms. Dick is a principal broker with Coldwell Banker Whitney. She explained that her purpose at the hearing was to express the need in the community for rural housing. Part of her job is to introduce people new to Pendleton with housing options, and tries to learn their expectations and housing requirements. She stated that people looking to move to

Pendleton expect a piece of the “real West” with open spaces. Ms. Dick stated that the area is facing a serious housing shortage in all levels of price and type. They are working hard to attract new companies to the area, and must be pro-active to address housing needs before people come to town. She named Cayuse Technology, Wildhorse and St. Anthony’s as employers that will be adding jobs over the next year. Local employers report that their employees buy homes in other communities and commute because of the lack of rural housing here. They are interested in small acreage properties. She stated that the focus of the proposed housing development would be high-end buyers with the money to develop nice homes. The subject property is a good location on all sides; views, proximity to town, clean neighbors and paved roads.

Chairman Rhinhart asked Ms. Dick if people were more interested in buying rather than building. She replied that it depended on the financial resources of the buyer.

Commissioner Reeder asked if the new jobs would bring in the high end buyers. Ms. Dick replied that this depended on the employment opportunity, and they feel that there will be a need for the high end buyers.

**Opponent Testimony:** John and Heidi Williams, PO Box 974 or 71687 SW Lake Drive, Pendleton, OR. Mrs. Williams stated that they drafted the letter that was submitted earlier, and had 35 of the neighbors sign it so that not everyone had to attend the hearing tonight and provide similar testimony before the Planning Commission. She commented that the land use finding from the hearing several years ago stated that there could be no more parcels created after the last partition. Patty Perry, Umatilla County Planning Department, had confirmed for them at that time that, unless land use laws were to change, there could be no further partitions on this property. Mrs. Williams said that they don’t consider this rezoning a change in the land use law for the Davis’s. The proposed application is not about a re-zoning, it is about a sub-division. They feel that the re-zone is taking advantage of a loophole in the law. Mr. Williams commented that Oregon Water Resources Department (ORWD) has no concerns about this proposal. He is a professional hydrologist, and does have concerns about the ground water supply in that area. The city of Pendleton’s well has decreased 3 feet per year for several decades, and that is why they installed a ground water re-charge system. He believes that more wells in this area will exert a large drain on the existing usage. They understand that the application to re-zone is only for a 50-acre portion of the overall parcel. This was not made clear in the application. Mrs. Williams explained that she is an engineer, and has studied roadways.

Mr. Williams spoke about the soils on the subject parcel. He identified the soils in the proposed re-zone area as Pilot Rock Silt Loams. According to the NRCS manual, the potential productivity is 70 bushels per acre for this soil type in a winter wheat rotation. When they purchased their property, they had to dig down 5 feet to site their septic system. Based on the productivity of growth on his parcel, he believes that the subject property productivity should be higher in the deep soil. When they purchased their property, it was with the intent of having the surrounding lands engaged in agriculture,

not development. They are concerned that having more people nearby will impact their farm management practices.

Commissioner Lee asked what the depth of their well was, and Mr. Williams replied that it is 200 feet down in basalt. It was a very expensive well to dig, with 110 feet of casing.

Commissioner Standley asked how they purchased their property. Mr. Williams replied that the property was purchased from Mr. Davis, following a partition of a non-farm dwelling land use decision.

Chairman Rhinhart asked Mr. Williams what his profession is. Mr. Williams replied that he has a PhD in range science and is a research hydrologist for the federal government.

Commissioner Reeder asked about the effectiveness of the city's recharge project. Mr. Williams replied that he does not have any confirmed information, just hearsay.

Commissioner Randall asked what the difference was in terms of impact to their well versus five more residences in the city. Mr. Williams responded that if there were five more residences drawing on city water, the burden would be shared. If there were five more residences in his area, and his well dried up, the burden would be solely on him. Discussion followed on well water versus city water.

**Opponent Testimony:** Terry Dirks, 71705 Tutuilla, Pendleton, OR. Mr. Dirks owns the property across the road from the Davis's. Mr. Dirks commented on the farming practices at the Davis farm. He is unhappy with the current conditions there, and stated that he has had to spray his property for the last several years to kill the weeds that are growing onto his property from the Davis farm.

Chairman Rhinhart asked Mr. Dirks if he thought the subject parcel would be better served as residential or agricultural use. Mr. Dirks stated it would be better used as farm ground, with better weed control. Commissioner Reeder asked if this parcel was CRP ground, and he was advised that it is not in CRP.

**Opponent Testimony:** Mark Dickey, adjacent land owner to the south. Mr. Dickey stated that he wanted to respond to Mr. Hojem's comments. Mr. Hojem had said earlier that there was a very steep hillside on the subject property. Mr. Dickey confirmed that it was steep, and it is behind his property. However, he did want it noted that the steep part was a very small portion of the overall parcel. Mr. Dickey agreed with the Williams' testimony that he was also told when he purchased his property that there would be no further development from the subject parcel. He commented that he did not believe that adding five high-end parcels would ease Pendleton's perceived housing issues. There needs to be more affordable housing available, not the proposed high-end housing that the applicant is asking for. Mr. Dickey spoke about the condition of the soils on his property, and problems with the water availability in their area.

**Opponent Testimony:** Lloyd Rhinhart, PO Box 658, Pilot Rock, OR. Mr. Rhinhart submitted written comments to Mrs. Mabbott. He asked what would happen to the remainder of the parcel if the re-zone is allowed. He stated that the subject parcel is good farm land, and if he owned it, he would be able to get 50-60 bushels of wheat per acre out of it and keep the weeds down. Mr. Rhinhart commented that Tutuilla Road is the most dangerous road in the county, according to Sheriff John Trumbo. He feels that more houses out there will cause more traffic, creating even more danger on the road. Additionally, more houses will cause him increased problems with his farm practices related to spraying.

**Agency Testimony:** Grant Young, DLCD, 105 1<sup>st</sup> St., La Grande, OR. Mr. Young requested a continuance of the hearing, in response to comments submitted from Mr. Hojem at this hearing. Mr. Young said that Mr. Hojem referred to Mr. Young's letter that the applicant could not take an exception to the Goal 3 standards on a partial part of the tract, that it must include the entire tract of land. Mr. Young confirmed that this is the department policy; an exception must be taken on the entire parcel. Mr. Young went on to state that the applicant's justification for the need for more rural housing in the area included information from the reservation nearby. Mr. Young contended that this information could not be calculated in the justification because the data must be drawn from the Urban Growth Boundary. The reservation is a sovereign nation, and does not meet the criteria for this standard. Mr. Young noted that the city of Pendleton is under Periodic Review currently, and is examining their Goal 10 housing component of their Comprehensive Plan. The state has spent \$267,000 of planning grants to help the city with Periodic Review, to determine if the city has a 20 year plan for adequate housing.

Mr. Young re-stated that the statewide planning goal does not require the county to provide housing. When the Comprehensive Plan was first written, the areas of rural residential zoning were excepted because of a pattern of existing development. The topography was examined during the development of the Comprehensive Plan, and at that time, the subject parcel and surrounding areas were being farmed with Class 3 soils. It has been established that the parcel is Class 3 soils, and is farmable. The use proposed by the applicant is residential, with a total of 5 dwellings. The criteria require that an applicant justify why the use cannot be established on other land that would not require an exception, such as land already zoned for residential use. Mr. Young stated that he had not yet heard any testimony that would justify the need for an exception. He was just made aware of the existence of a parcel nearby the subject parcel that was approved for Measure 49. He further commented that within the Urban Growth Boundary of Pendleton, there are currently over 40 lots in sub-divisions that are ready to go. There are other lands available to satisfy this residential use that would not require an exception. Goal 10 does not require the provision of 10-acre rural residential parcels as a housing need.

Mr. Young discussed the economic justification within the Urban Growth Boundary and the neighboring sovereign nation. He referenced Mr. Hojem's letter pertaining to economic activity occurring in an Urban Growth Boundary. There is a class of land that

is zoned for industrial use, and Umatilla County has a lot of that class of land. He stated that this satisfied the demand for rural industrial or commercial land.

Commissioner Kaminski asked if there was an inventory of vacant rural residential land, since demand of land is being discussed. Mr. Young replied that the state does not have this information. Discussion followed on the availability of rural residential parcels in Umatilla County. Commissioner Randall commented that the RR-10 zone would be considered by realtors as an “executive” parcel, where a buyer would build a larger home. Mrs. Mabbott stated that there are 5 RR-10 acre parcels available in the Hermiston area, as a result of the Kennedy application. She explained that the county only recently adopted the RR-10 zone a couple of years ago as a result of the state changing the Goal 14 rules. Mr. Young noted that the goal does not require the county to provide housing or 10-acre parcels, so there is more than adequate land in existing exception areas to allow 5 more dwellings without having to convert resource land to residential use.

Chairman Rhinhart called for a brief recess.

Chairman Rhinhart reconvened the hearing at 8:31 p.m.

Mr. Young continued his testimony. He indicated that the applicant cited economic activity in the city, Urban Growth Boundary and the reservation in their statement. These are not considered rural economic activities, so this would not satisfy the criteria. There was no analysis of other sites provided in the application that would satisfy the standard. Mr. Young talked about the applicant’s statement that this proposed use would provide a transition area or buffer zone between densely populated areas and agricultural use. DLCD fails to see why this is a factor, as the proposed use would not differ in any way from the current boundary of residential density in close proximity to agricultural use. If the proposed use were to be allowed, the owner of a proposed 10 acre parcel would be free to conduct the same farming practices on their property as are currently allowed. There is nothing in the application that would say that farming cannot occur on the 5 10-acre parcels. Even if the property were re-zoned as proposed, the conflict would not be reduced or mitigated, so this criterion is not met. Mr. Young commented that there had been testimony already about the presence of noxious weeds on the subject parcel, so the impact would be the same as agricultural use.

Mr. Young testified about Item #12, the irrevocably committed exception. He stated that there would have to be the exact same type of settlement pattern that you see in the exception lands, and that is why these lands were excepted out when the plan was created, due to a development pattern already there. He stated that there is no development pattern on this subject property and it was not excepted out when the Comprehensive Plan was created. There are exception areas to the west and the south, but there is nothing to prevent this subject parcel from continuing as agricultural use.

Regarding Item #13, Mr. Young offered rebuttal to other statewide planning goals. The applicant stated that a re-zone of this subject parcel would promote economic growth for the area. Mr. Young asked what type of economic growth was the applicant referring to,

and stated that no expert testimony or analysis was submitted with the application to support this statement. He questioned that the one time development of these five proposed home sites would outweigh the value of continued agricultural use of this subject property. In ten years, which use will provide the most economic benefit, residential or agricultural use. Mr. Young re-stated that Goal 10 does not require the county to make provisions for rural residential housing, and cannot be used as a reason to justify the application.

Mr. Young advised the Planning Commission that counties are required to develop a population forecast and assign values to the cities estimated population growth. He stated that if EFU land is converted to residential zoning, it will upset the population forecasts. This is also a Goal 10 issue for cities, as they rely on this information to justify how much residential, commercial and industrial land is needed for their 20 year plan.

In response to Item #15, Mr. Young replied that the standards are not met, as local ordinances require that applications must be consistent with the local Comprehensive Plan. Mrs. Mabbott confirmed this statement. DLCD feels that the application is not consistent with the local ordinances.

Chairman Rhinhart asked Mr. Young for a summary from the DLCD on this application. Mr. Young replied that the DLCD does not feel that this application meets the standards to satisfy the criteria for an exception. The state reviews many applications just like this one every year that are not approved. The program was designed to protect farm ground, and that is what the subject property is.

Commissioner Standley asked for interpretation of the letter submitted pertaining to the prior land partition. Mrs. Mabbott confirmed that the content of the letter was accurate, that there should be no more partitions allowed on this property. This would only apply if the land was still zoned EFU. If the re-zone were allowed, the property could be further partitioned.

Chairman Rhinhart asked staff about the request from DLCD for a continuance. Mrs. Mabbott advised the Planning Commission that they have the option to continue the hearing, or not continue the hearing but keep the record open for 7 days so the agency can submit further comments. New evidence was not submitted, but new arguments were submitted. Discussion followed on the need for a continuance.

**Rebuttal:** Mr. Hojem provided comments in rebuttal to Mr. Young's testimony. He spoke about the objections from the neighbors pertaining to statements made to them that there would be no further partitions of this subject parcel. Mr. Hojem stated that there is a need for more housing, and the two neighbors opposing the application should not be considered a reason to deny the application. He found the personal attacks on his client objectionable and irrelevant, and having nothing to do with the criteria. Mr. Davis travels to California in the winter to sell crop insurance. Mr. Hojem referenced the testimony from Vicky Dick, realtor. He stated that this is the specific type of executive housing

that people new to Pendleton are looking for. This is not housing meant for the line workers at a factory that might come to Barnhart Road. It is meant for executives and administrators with specific wants and needs. Mr. Hojem commented that they are not using a “loophole”; they are using the law that has been in existence for years. The neighbors might have been told there could no further development several years ago in error, or perhaps they didn’t understand land use law to know that there are other ways to develop property. There was no contract made to this end, so he stated that this should not be held against his clients.

Mr. Hojem stated that Mr. Young is wrong in his statements pertaining to the regulations about specific kinds of housing and densities. The availability of housing available in Hermiston is not pertinent to Pendleton. Mr. Hojem also commented that Mr. Young was wrong in his interpretation of the regulation for rural economic activity. He also stated that it was wrong to dismiss the economic activity happening on the reservation as it is part of this county, and was a disservice to the Tribe. He encouraged the Planning Commission to ignore these comments. Mr. Hojem advised the Planning Commission that the regulations placed the responsibility of supplying comparative information on other areas available for development on the person contesting the application, not the applicant. He said that population forecasting is not a part of the criteria for this application and should not be considered as a reason to deny this application.

Mr. Hojem referenced Mr. Young’s comments about the application not being approved because the subject parcel is farmland. Mr. Hojem confirmed it was farmland, and that is why there is a goal exception process to meet criteria in order to remove the resource designation. It does not matter what the class of soils is.

Mr. Hojem suggested that everyone has had an opportunity to submit their comments, and he did not submit any new materials. He asked that their application be forwarded to the Board of Commissioners with a favorable recommendation. They have made their argument that their application meets the criteria for an exception.

Commissioner Lynde asked Mr. Hojem why they included materials in their application about what can be done with a small farm. Mr. Hojem responded that they wanted to show the uses best suited to smaller parcels, and this would help promote the economy. Commissioner Lynde commented that one of the benefits expressed by the applicant was that this re-zone would produce a buffer zone between residential use and intensive farming practices. He asked if a small farm practice would not have these same impacts on the residential use. Mr. Hojem replied that the impact would be smaller from the smaller parcels. Commissioner Kaminski agreed with Commission Lynde, and said that the zoning does not dictate the price and quality of a property. The application is implying that large, expensive homes will be built on the proposed parcels. Mr. Hojem referenced the testimony of Ms. Dick, and said that people wanting to build a more modest home would probably not be able to afford these 10 acre parcels. They are talking about a market of people in management for the various employers. Commissioner Kaminski commented that this statement was judgmental and they are

only talking about zoning and land use. Mr. Hojem agreed they are only talking about zoning, but if the re-zone were allowed they would discuss development at a later date.

Commissioner Reeder asked Mr. Hojem about his data source for the soil classification. Mr. Hojem replied that his information was from the county. Mrs. Mabbott confirmed the resource was the Soil Conservation manual. Discussion followed on the topic of soil analysis for the subject parcel, and confirming the accuracy of the data source.

**Hearing Closed; Deliberation and Decision:** Discussion followed about testimony from neighbors about the status of any future development on the subject property, and the implications of a buffer zone. Commissioner Reeder clarified that they are voting on a recommendation to the Board of Commissioners, not the application. He asked what the urgency was with making a decision tonight. Mrs. Mabbott explained that the hearing with the Board of Commissioners is already scheduled.

Commissioner Lynde moved to recommend denying the application to the Board of Commissioners, and Commissioner Lee seconded the motion. Commissioner Lynde stated that that he is not convinced that the proposed use of the application will serve as a buffer zone, and that the project is not what the applicant has presented. Question called; motion carried 6:1. This application and the recommendation from the Planning Commission to deny the application will be heard by the Board of Commissioner on April 21, 2011.

**Other Business:** Mrs. Mabbott informed the Planning Commission about a land use training opportunity coming up, and the department would pay for any members that would like to attend.

Mrs. Mabbott distributed a document she worked on with Brian Wolcott, Walla Walla Basin Watershed Council and other watershed councils, pertaining to development in a water shed. The document is meant to be a resource guide to anyone wanting to develop in a water shed. She asked the Planning Commission to review the document and offer comments in the next few weeks.

A brief discussion about the wind development standards being considered by the Board of Commissioners was held.

#### **ADJOURNMENT:**

The meeting was adjourned at 10:39 p.m.

Respectfully submitted,

Gina Miller  
Secretary