

UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, December 11, 2014
6:30 p.m., Umatilla County Justice Center, Media Room
Pendleton, Oregon

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COMMISSIONERS

PRESENT: Randy Randall (Chair), Gary Rhinhart (Vice Chair), John Standley, Don Wysocki, David Lee.

ABSENT: Cecil Thorne, Tammie Williams.

STAFF: Tamra Mabbott, Carol Johnson, Connie Hendrickson.

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Chair Randall called the meeting to order at 6:30 p.m.

Approval of minutes: Commissioner Wysocki made a motion to approve the minutes of the October 23, 2014 meeting as presented. Commissioner Rhinhart seconded the motion and the minutes were approved by consensus.

Chair Randall read the Opening Statement and identified the request as Land Use Decision #LUD-174-14. The applicants, Sam and Rosella Humbert are requesting an interpretation and/or clarification of Condition "A" of a Land Use Decision approved by the Planning Commission in 2005.

Chair Randall asked if there were bias or conflicts of interest; there were none.

Staff Report: Carol Johnson Senior Planner noted that Sam and Rosella Humbert were at the hearing along with their representative, Leslie Hauer. Mrs. Johnson explained that "Condition A" is a condition of approval applied to the Humbert's 2005 Planning Commission approval of a verification of a non-conforming use. The Land Use Decision made in 2005 by the Planning Commission is not a part of the decision being requested at this hearing. The 2005 decision allowed the Humbert's to operate a heavy equipment operation space (contractor's storage) and scrap yard/salvage yard. In order for the Humbert's to sell their property, the potential buyers want clarification of what was approved in 2005. Mrs. Johnson referred to a map of the Humbert property that was a part of the Commissioners' packets. She reported that the Planning Department received one phone comment from notified property owner, Gloria Williams who also followed up her phone call with an email which is in the Commissioner's packets. She added that she had received a comment letter by fax from John Ruthven and gave each Commissioner a copy.

The county code does not contain specific standards for making an interpretation of a condition of approval. Today's decision is confined to clarifying what "Condition A" allows.

Commissioner Rhinhart referred to a photo that was taken in 2012, noting that there were conditions required from the Humbert's at the 2005 hearing. He asked if those conditions had been fulfilled. Mrs. Johnson responded that there was some question as to whether all of the fencing required had been installed. Commissioner Rhinhart also asked if the adjoining lots currently had a Code Enforcement (solid waste) case against them and Mrs. Johnson answered they did not. There was discussion regarding the multiple zones of the property from RRSC (Rural Retail Service Commercial) to EFU (Exclusive Farm Use).

Commissioner Standley referred back to the 2005 hearing and asked for clarification of what a non-conforming use is. Mrs. Johnson replied that it was a use that was present on the property prior to the ordinance that currently regulates the property and restricts the particular use in that zone. A use labeled as non-conforming must remain continuously in use or the right to have the use will be discontinued. Commissioner Standley asked why the use on the property was still considered non-conforming if it had been there for many years. Mrs. Johnson answered that according to the code, a salvage yard is not a conforming use in the RRSC zone.

Commissioner Rhinhart commented that the Planning Commission in 2005 thought the approval was for the Humbert's own heavy equipment repair and the salvage was a part of the operation. Discussion followed.

Commissioner Standley remarked that the differently zoned parcels abutted each other and asked if the land had been kept and treated separately. Mrs. Johnson answered that it had not, which is part of the reason they had problems with Code Enforcement in the past. Commissioner Standley noted that at the hearing in 2005, he hadn't considered the individual tax lots and their zoning. He considered the use of the property and the history. Mrs. Johnson stated that the use on the property was the focus more than anything else discussed at the 2005 hearing. There wasn't a distinction between what was allowed on the individual tax lots which is partially why clarification is needed at this time. Discussion followed.

Mrs. Mabbott reminded the Planning Commission this is not the first time this property has come before them. An application was submitted in 2013 requesting a rezone of the EFU parcels to RRSC. The application was withdrawn.

Representative/Applicant testimony: Leslie Hauer, 6100 Collins Road, West Richland, WA and Cindy Granger, 53125 W. Ballou, Milton-Freewater, OR. Mrs. Hauer distributed a document to each Commissioner. She summarized their reason for coming before the Planning Commission by asking two questions: Can the Humbert's continue doing truck repair on tax lot 1904 and can they continue to store vehicles and parts on tax lots 1901 and 1903 as authorized in 2005? Mrs. Hauer stated that they were not requesting a change or new activity and the 2005 non-conforming use approval applied to all three lots.

The letters they resubmitted listed various businesses that occurred when the McMunn's owned the property and the continuing actions carried on by the Humbert's since they

have owned the property. She added that the letters were signed by customers of the Humbert's and described the business of vehicle repair and activities associated with it.

The RRSC zone allows automobile, truck and motorcycle repair shops. She added that the word truck should not be limited to pickup trucks as suggested in the staff report. Humbert's not only work on their own vehicles but have always done work for others as well. The 2005 Planning Commission determined that the non-conforming use for the heavy equipment operation base and salvage yard should be allowed. The Planning Commission did not address what the term heavy equipment operations base meant other than the uses that were listed in the Findings and the Staff report. The Planning Commission also did not consider what accessory uses might be permitted. Because the Planning Commission did not limit the extent of the use in their 2005 decision, she suggested that the term "heavy equipment operations base" was broadly intended to include the range of activities that was in the Staff report and the letters from customers. Truck repair was not separately listed as a non-conforming use possibly because the Planning Commission thought it was or could be a similar permitted use.

Mrs. Hauer noted the current Staff report appears to suggest that truck repair is a new use on the site that should be approved as a conditional use, which is incorrect. Truck repair and maintenance of other vehicles and equipment as listed in the 2005 application and decision have been continuous on the site since well before 1974 when Humbert's purchased the property. She added that she and the Humbert's respectfully request that the Planning Commission not require new permits in order to continue their business.

Mrs. Granger reported that the fencing around the property is all but 88 feet completed and the only things stored on the EFU parcels are farm equipment. She added that they are attempting to stay in compliance with the code. She commented that the fence was around all five lots and they were not aware until they re-read the original application that the fence was supposed to go down the middle of the property so items related to truck, heavy equipment repair and salvage would not spread over to the EFU parcels.

Commissioner Rhinhart asked Mrs. Hauer what she suggested as a solution for this situation. Mrs. Hauer answered that the easiest thing is to look at the RRSC zone which allows for automobile, truck and motorcycle repair and determine that the Humbert's business is not non-conforming but a permitted use. The Humbert's would like to sell the property and the potential buyers want to confirm they will be able to operate the same type of business that Humbert's are currently operating. Discussion followed.

Chair Randall asked for confirmation that the Humbert's were not cutting or welding on tax lots 1901 and 1903. Mrs. Granger answered that they were only being used for storage. She added that the only cutting that takes place is when they needed to cut out a part to use or if all of the needed parts have been used from a truck it would be cut out and then disposed of. Discussion followed.

Mrs. Johnson stated that the county has not issued a permit for a heavy truck repair business in a commercial zone; it has always been in a light or heavy industrial zone. She

added that Staff thought truck repair could be considered a similar use to what is allowed in the RRSC zone and the Humbert's or the future owners could make an application for a conditional use for a "use similar."

Commissioner Standley stated that he had been dealing with heavy equipment for many years and it was common knowledge that if you need parts, transmission repair or engine-work you take your truck to Humbert's in Milton-Freewater. Mrs. Johnson noted that was a part of why this hearing was being held; to clarify that issue. Mrs. Hauer listed two possibilities that would resolve the problem. The first is that truck repair is a permitted use so they should be allowed to repair trucks. The second is to decide that the truck repair is a non-conforming use and allow the Humbert's to continue to operate the business the way they have since 1974.

Mrs. Granger informed the Planning Commission that her parents want to retire. The building itself and the land are not worth a great deal of money. They would like to sell the business and the new owners want to run their own business the same way the Humbert's have. Mrs. Hauer added that the potential buyers initially wanted to have a commercial storage on the EFU lots but realize that is not an option.

Commissioner Danforth asked for clarification on a portion of the packet that stated "after much discussion it was agreed by the Commission and Mr. Humbert that the property should be given scrap yard and farm tractor storage designation." She added that after reading the packet and the minutes from 2005 her thoughts were that the Humbert's had a supporting business to the refuse and recycling business where they repaired their own equipment but not that of outside customers.

Commissioner Wysocki asked if the repair business was separate from the refuse business. Mrs. Granger answered that the books and the checking account are kept together for tax purposes but she could easily separate them. Commissioner Wysocki asked how long the business had been in operation. Mrs. Granger replied that they had operated at that location since 1974. The business in 1974 was logging and repair. When the logging went out they started a road construction business while continuing the repair business. In 1996 they purchased the refuse company.

Commissioner Wysocki asked what the buildings on the property were used for. Mrs. Granger described what was shown in the photograph Commissioner Wysocki was referring to.

Commissioner Marlatt asked what would be left on the property if the business sold. Mrs. Granger explained that all of the buildings would be left but they would remove the portable structures. She added that they planned to move the refuse and recycling office and the computer/printer recycling to the Hwy 11 frontage property. Mrs. Mabbott inquired about the Schubert's repairing some of Humbert's trucks and Mrs. Granger answered that the Schubert's help was needed because the motors in the new garbage trucks are more advanced than they used to be. Mrs. Mabbott asked whose trucks the Humbert's repaired. Mrs. Granger named some of their customers.

Mrs. Johnson asked what types of repairs they performed and Mrs. Granger listed the various types. Chair Randall referred to the hearing in 2013 when he suggested that they square the corner off making the property RRSC and the other piece LI so there would not be a non-conforming use on the property. Mrs. Johnson told the Commissioners that possibility was discussed. Staff had met with Mr. Humbert and other state agencies, but eventually the original application was withdrawn. Chair Randall commented that he was uncomfortable continuing to approve a non-conforming use. He added that the Humbert's business was a great asset to the community. If the property could be rezoned their business would be in compliance and the non-conforming use would cease to be an issue. Mrs. Mabbott said the bar is very high to justify an industrial zone, particularly where there is a lot of undeveloped industrial property in the UGB (Urban Growth Boundary) along Hwy 11.

Mrs. Mabbott suggested the Planning Commission could make a finding that the use was primarily for heavy equipment and allowed some automobile and truck repair. Commissioner Standley stated he was of the opinion that it was already allowed because it had been taking place for so many years. Mrs. Mabbott said they were not intending to remove what was approved in 2005. They were attempting to clarify or define it so the property can be sold and continue to be used as a heavy equipment, truck and auto repair business. Commissioner Standley asked if they could eliminate the "non-conforming" term. Mrs. Mabbott answered they could not because the industrial use is non-conforming in the RRSC zone, however the non-conforming business is permitted. Commissioner Standley asked if the Humbert's business would transfer between owners so this subject would not have to be visited again and Mrs. Mabbott confirmed that it would. She added that the record needed to be clear that what is being stored on the property is related to the business being operated.

Commissioner Wysocki asked if the potential new owners would need to expand the equipment and machinery of the facility to accommodate the repair of newer trucks. Mrs. Mabbott answered that the applicant would like to have the Planning Commission confirm that the owners would be allowed to expand a similar or existing use. Chair Randall stated that expansion would be limited by the size of the lot and the highways leading to and from. Mrs. Granger informed them that the potential buyers would be going from their existing one stall shop to a five stall shop. Purchasing the Humbert's business would allow them to expand by four stalls. Discussion followed.

Commissioner Wysocki asked about the nature of the water and waste disposal on the property. Mrs. Granger answered that they had a well and a septic system. Mrs. Mabbott asked how many people were employed by the Humbert's. Mrs. Granger answered that they had five employees but they did not work full time. The new owners would have ten employees, and Commissioner Standley commented that would be a good thing for Milton-Freewater.

Applicant testimony: Sam Humbert 53293 Triangle Road, Milton-Freewater, OR. Mr. Humbert stated that if the new owners needed to bring in bigger rigs there would not be

enough room on the 2 ½ acres for it. They will need to use the other parcels to store some of the parts, etc. He described some of the types of the work their business does on the trucks. He addressed the fact that some of their trucks have to go to Schubert for repairs. He stated that newer trucks have computers and the Humbert's don't have the equipment necessary to do repairs on computer-operated engines.

Commissioner Wysocki asked how long it had been since the EFU ground was farmed. Mr. Humbert answered that it had never been farmed. He informed the Commission that in the 1950's he helped to dig the footings by hand for that shop building. Discussion followed.

Mrs. Johnson requested that the Exhibits be adopted into the record. Chair Randall closed the hearing at 7:42 p.m. and began deliberations. After some discussion it was decided that the language of the first condition should read "The Planning Commission confirms Condition A of the 2005 decision as permitting two principle uses as non-conforming uses; heavy equipment and truck repair and scrapyard salvage yard associated with equipment and truck repair on the properties identified as tax lots 1901, 1903 and 1904". It also included "The storage of materials used in the operation of the heavy equipment and truck repair and materials to be salvaged as a part of the scrapyard salvage yard approval on tax lots 1904, 1903 and 1901". Commissioner Rhinhart requested that the language also clarify that because the parcels are EFU ground, no new non-farm structures will be allowed.

They also decided to add the language "some pickup repair is allowed" and "the heavy equipment and truck repair shall be primarily on tax lot 1904 with accessory use i.e. storage or dismantling is allowed on tax lots 1901 and 1903". They also added "accessory uses i.e. welding shop and machine shop in support of the heavy equipment and truck repair on tax lot 1904" and "sales of parts and recovered scrap and salvage materials allowed as an accessory use to the permitted use on tax lots 1901, 1903 and 1904".

There were no changes made to conditions 2 - 4. Condition 5 was edited to read "pick up repair is allowed at the business".

There was discussion regarding the fencing and it was decided that the Humbert's must complete the installation of the missing 88 feet of fence as required by the 2005 Land Use Decision.

Commissioner Rhinhart made a motion to approve the staff recommendations with the modifications made. Commissioner Standley seconded the motion. The Commissioners voted 8:0 in favor of the motion.

Other business: Mrs. Mabbott informed the Commissioners that the A & B Asphalt LUBA oral arguments would be held on December 23, 2014 in the morning. The same attorney will argue the Port of Umatilla vs. City of Umatilla zoning dispute in the afternoon. The East End Rod & Gun Club LUBA appeal has not yet been scheduled.

Mrs. Mabbott stated that Shane Finck and Gina Miller put together a memo regarding park model mobile homes. A park model home is still an RV (recreational vehicle) and is not allowed as a dwelling except in resource zones. Planning staff would like to get the Commissioners' input on allowing park model RV's as a dwelling. They do not have a foundation, but their setup is permanent. It may be possible to make an interpretation of the code so a park model is not the same as an RV. Commissioner Rhinhart noted that 500-600 sq. ft. "mini homes" are becoming very popular. Commissioner Standley asked if they were still licensed as RV's and Mrs. Mabbott confirmed that they were. They can't be permitted as a manufactured home or personal property. They must be licensed as an RV. There was discussion regarding the use of an RV as an accessory dwelling and taxing it as such. The park model RV's, when set up, look like a home, not an RV. There was discussion regarding whether or not a park model could be set up in a mobile home park.

Commissioner Rhinhart suggested that the park model RV's could be permitted as hardship dwellings. Mrs. Mabbott agreed that idea had merit. There was discussion about the safety factor of the park model RV's so Commissioner Standley suggested they require 3 - 4 axels instead of 2. There was discussion regarding the park model RV's not being self-contained like a regular RV and needing to be connected to a septic system. There was a general consensus that allowing the park model RV's as hardship dwellings was a good idea. Mrs. Mabbott asked if they should be allowed in a residential zone. After some discussion they decided that it would affect home values in a residential zone. Mrs. Mabbott stated that more research needed to be done and then staff would work on a possible code amendment for some clarification. Commissioner Wysocki noted that lending institutions will not offer loans on a park model as a dwelling. Discussion followed.

Election of officers: Commissioner Wysocki moved that Commissioner Randall remain the chairman and Commissioner Rhinhart remain the vice chair. Commissioner Standley seconded the motion and it passed unanimously.

Chair Randall adjourned the meeting at 8:30 p.m.

Respectfully submitted,

Connie Hendrickson
Administrative Assistant