

UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, December 19, 2013
6:30 p.m., Umatilla County Justice Center, Media Room
Pendleton, Oregon

COMMISSIONERS PRESENT: Randy Randall (Chair), Gary Rhinhart, Tammie Williams, David Lee, Don Marlatt, Suni Danforth, John Standley, Don Wysocki, Cecil Thorne.

STAFF: Tamra Mabbott, Richard Jennings, Gina Miller, Connie Hendrickson.

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 Randall called the hearing to order at 6:31 p.m.

APPROVAL OF MINUTES:

Commissioner Lee moved to adopt the minutes of October 24, 2013 as presented, and Commissioner Marlatt seconded the motion. Motion carried 8:0.

Chairman Randall read the opening statement and called for abstentions, and there were none. Chairman Randall announced that there would be a change in the order of which hearing went first, due to the large attendance for the other application.

NEW HEARING:

REPLACEMENT DWELLING, #ZP-13-274 submitted by NORMAN KRALMAN.

The applicant requests a zoning permit for a REPLACEMENT DWELLING in the EFU Zone. The subject property is located on Assessor Map 5N 36 21 tax lot 380 with the rural address being 81965 Linton MTN RD, Milton-Freewater, OR 97862. A zoning permit is reviewed using the administrative review procedures with clear and objective criteria. The question with this application is whether the original 1925 stick-built house was already approved for replacement with a double-wide manufactured home through the issuance of a 1979 zoning permit. Because the facts of the application are being questioned by the applicant the application is being sent to the Planning Commission per UCDC 152.775 (B). The standards of review for this use are found in the Umatilla County Development Code, Section 152.058 (F).

Staff Report: The staff report was presented by Richard Jennings. He explained the standard Zoning Permit application process, a permit that is typically issued at the counter as a ministerial decision. Mr. Jennings indicated that this permit was forwarded to the Planning Commissioner for deliberation due to the amount of questions surrounding the circumstances. The subject parcel is located along Linton Mountain Road near the Walla Walla River. He said that Tax Lot 380 is approximately 160 acres and is on both the east and west side of Linton Mountain Road. In 1925, there was a stick built home built on the west side of the parcel, west of Linton Mountain Road. This home was occupied through the 1970's. In 1979, a double-wide manufactured home was placed on the east side of the parcel, east of Linton Mountain road, through Zoning Permit #ZP-79-313. The property zoning at that time was F-1, with a dwelling density of one dwelling per 19 acres. Mr. Jennings stated that when the Zoning Permit application was received to replace the double wide manufactured home, the Planning Department understood that the stick built home had already been replaced by the double-wide manufactured home. This would leave the stick built as non-replaceable. Mr. Jennings stated that the parcel was sub-standard, and there were no other permits in the property file that would allow a second dwelling on this parcel. Once replaced by the double-wide manufactured home, the stick built home would have then become just an accessory structure.

Mr. Jennings stated that the question before the Planning Commission was not about whether or not the stick built home met the criteria in the ordinance for a replacement dwelling; the question was whether or not the stick built home had already been replaced by the double-wide manufactured home, and can it be replaced again. He said that there was not enough evidence to show a permit that would allow there to be two dwellings on the subject parcel. The application for the double-wide should have stated that the stick built was the dwelling being replaced and could no longer function as a dwelling. Due to this ambiguity, Mr. Jennings referenced the F-1 zoning code (Exclusive Farm Use), about having two dwellings on the same parcel when that code was still in force. He found that it could happen, and would require a Conditional Use Permit to be issued. As result of this review, Mr. Jennings stated that the found that the double-wide manufactured home had replaced the original stick-built home. He also spoke with the son of the owner of the property at that time, which has since passed. The son told Mr. Jennings that once the double-wide was set up, they did not have anyone occupying the old stick built.

Mr. Jennings explained the decision that needed to be made, and the options available to the Planning Commission. He said that the Planning Commission could find that the original stick built home be deemed an accessory structure, and that there should only be one dwelling per parcel and the Zoning Permit denied. They could also choose to approve the Zoning Permit, provided that they produce reasons why they would allow the second dwelling on the parcel.

Commissioner Lee asked if the parcels were all together, and Mr. Jennings explained that the subject property was one parcel, divided in two by Linton Mountain Road. Commissioner Lee commented that it was highly erodible ground and asked if the

property had been split by the road. Mr. Jennings said that it needs to be considered as one parcel, regardless of the road easement through the property. Commissioner Rhinhart asked if the parcel was 16 acres, and Mr. Jennings confirmed the size and discussed the zoning change from F-1 to EFU in the 1980's. Commissioner Standley asked for an explanation of the tax codes. Mr. Jennings said that there is still some assessed value from the Tax Department, but there is not much communication between Planning and the Assessor's office. Even today, a structure is assessed until it is removed from the property. Mr. Jennings explained that if a structure is being changed from a dwelling, the plumbing and septic must be removed but the electrical can remain intact. Discussion followed on the assessment and tax codes. Mr. Jennings said that the Assessor's office does the best that they can but doesn't always catch all the changes that occur on a parcel. He stated that the Planning Commission had to decide if there was enough evidence to show that two homes had been authorized to be on the property.

Applicant Testimony: Norm Kralman, 52151 Fruitvale Road, Milton-Freewater, OR. Mr. Kralman introduced his attorney, Daniel Kearns, who was representing him in this matter. He stated that he wanted to show the human side of this issue, and that the packet of information they received was not complete enough for the Planning Commission to make a decision. He said he disagreed with Mr. Jennings and wanted to explain why he bought the property, what he wanted to do with the property and was anyone suffering with what he was asking to do. Mr. Kralman stated that he has lived at Tollgate for twenty (20) years, and is 70 years old. He was trying to prepare for changes in his life and saw this property as a way to stay close to his family. He bought the land in a private party sale and saw that the Linton Mountain Road split the property in an inconvenient manner. He also bought Tax Lot 370 and thought he could use the road as a natural geographical boundary. Mr. Kralman regarded the 1925 house as an opportunity to remodel for a dwelling. He stated that in August he started discussing his options with Mr. Gillis and discovered there were several issues. He thought that the older home could qualify as a home site since it was on Class 7 soils but changed his mind about the remodel.

Mr. Kralman displayed some photos of the subject parcel and pointed out several features to the Planning Commission. He said that the older home was engulfed in blackberry bushes when he bought. Several pictures showed the interior of the home, and Mr. Kralman discussed how it would qualify for a replacement dwelling with a good view of the valley. Chairman Randall stated that the Planning Commission was not disputing that the stick built home would qualify for a replacement dwelling, and they did not require testimony about this. Chairman Randall asked Mr. Kralman if he had additional information to present. Discussion followed on the site plan in the packet.

Mr. Kralman stated that taxes have been charged as a residence on the older stick built all along, and have been paid as such. He talked to several neighbors and found that there was no opposition to his building a new home there. He read a petition to the Planning Commission that he went around and had approximately 20 people sign. The petition stated that his intentions were to demolish the old 1925 house, get a replacement dwelling permit to build a new home there, and complete a property line adjustment so that all of

Tax Lot 380 is west of Linton Mountain Road and all of Tax Lot 370 will be completely east of Linton Mountain Road. He asked that the petition be entered into the record. Mr. Kralman stated that he believed that the 1979 Zoning Permit held no restrictions on having a second home, and since the 1925 stick built has been taxed and meets criteria as a replacement dwelling, and he should be allowed to have a second home on the subject parcel.

Applicant Testimony: Dan Kearns, attorney representing Norm Kralman. Mr. Kearns stated that they have applied for a permit under the current zoning, and they contend that Mr. Jennings is applying standards from the 1972 code. He discussed the Conditional Use Permit conditions, and how the code today is much more restrictive for farm land. He stated that replacement dwellings are very simple and handed out a copy of a recent Zoning Permit from an adjacent property that clearly states that the old home being replaced must be removed. He discussed how Zoning Permit applications for replacement dwellings were done differently in the past. He said that Type 1 uses cannot have additional conditions added to them. Mr. Kearns stated that he did not find any requirements for a Conditional Use Permit (CUP) for a second dwelling in the 1972 code, as Mr. Jennings had pointed out earlier in testimony. Mr. Kearns said that according to the Zoning Permit issued in 1979, there was no CUP required at that time for that dwelling. He discussed the 1972 F-1 code and what types of dwellings were allowed at that time, and what permits were required for them. Mr. Jennings stated that the density standard was for 1 dwelling per nineteen (19) acres. Mr. Kearns stated that they are not required to prove that multiple dwellings were allowed, they only want to apply for a replacement dwelling for the lawful 1925 dwelling. He stated that the county does not have the proof to deny the application.

Chairman Randall asked why the lot line adjustment was not included in the application. Mr. Kearns said they could apply for the lot line adjustment and then apply for the replacement dwelling. If that was denied then there would be a different configuration. They want to do a lot line adjustment, but do not want to apply for a new dwelling as that would be a much more difficult process and criteria to meet than a replacement dwelling. They also do not want to change the lot line yet, as that would change the creation date of the parcel and then it would be impossible to place a new dwelling. They would prefer to do it in this order. Chairman Randall said that these laws are put into place to protect the public, and as a real estate broker, he knows that it is more difficult to sell a property with two homes on it. He favors the lot line adjustment approach. Mr. Kearns said they could add it as a condition of approval and let the road divide the parcels into two sides, each with a home.

Proponent Testimony: Robert Rich, 54812 WW River Road, Milton-Freewater, OR. Mr. Rich is the property owner adjacent to the west, Tax Lot 201. He stated that he had a double-wide manufactured home, and replaced it with a stick built dwelling. He retained the use of the manufactured home as a shop, and removed the kitchen. He stated that he was in support of the Kralman application.

Commissioner Wysocki asked how long he had lived there, and Mr. Rich replied he had been there 9 years. He confirmed that no one had lived in the Kralman 1925 home in that time.

Chairman Randall closed the hearing and moved to deliberation.

Commissioner Lee said that if the ground was split into two lots, the house should be on the hill where it's not good farm ground. Commissioner Wysocki asked if the part of the tax lot on the west side could be joined to Tax Lot 370. Mr. Jennings stated that was an entirely different issue, and not applicable to the application at hand. Chairman Randall asked if they could make this a condition of approval, as suggested by Mr. Kearns. Mr. Jennings stated that this is a Sub (1) use and staff cannot add conditions to an outright use or Zoning Permit. The only issue before the Planning Commission now is whether or not the applicant can replace the stick built with a second dwelling on this one tax lot.

Chairman Randall said that the landowners have been taxed and have paid these taxes. Mr. Jennings stated that the assessed value placed on the 1925 stick built was only \$2000.00, much less than the garage on the property. Mr. Jennings said that if the Planning Commission can agree that the 1925 stick built has not already been replaced by the double-wide, the 1925 stick built cannot be replaced twice. Commissioner Standley moved to allow the application as presented, and Commissioner Lee seconded the motion. Motion carried 8:0. Commissioner Williams recused herself from the vote.

Chairman Randall called for a brief recess. Hearing reconvened at 7:38.

NEW BUSINESS:

REQUEST FOR A PUBLIC HEARING, #LUD-163-13. East End Rod & Gun Club submitted an application to continue operation of firearms training facility located at 54752 Milton Cemetery Road, approximately one mile east of Milton Freewater on tax lot 1200 of Assessor's Map 5N 36. The Planning Director issued a preliminary approval of the Land Use Permit and sent notice to adjacent property owners and agencies. Subsequently, a REQUEST FOR A PUBLIC HEARING was submitted on November 8, 2013. The standards of review for the Land Use Permit are found in the Umatilla County Development Code, Section 152.617(II) (5) and 152.063.

Chairman Randall read the opening statement and called for abstentions. Commissioner Lee and Commissioner Danforth recused themselves from participating in this hearing due to personal involvement with the applicant and/or opponent. A quorum was still present.

Staff Report: The staff report was presented by Tamra Mabbott, Planning Director. She explained that the information packet had been mailed to the Planning Commission seven days prior to the hearing and was posted on the website. Since that time, multiple letters had been received for the record. She read a list of the additional letters received in support and opposition to the application and copies were distributed to the Planning Commission. (See record for copies of letters) Mrs. Mabbott displayed a map of the area.

Commissioner Williams moved to accept the additional 21 exhibits into the record, and the motion was approved by unanimous consent.

Mrs. Mabbott explained that this application is for a Land Use Decision, not a Conditional Use Permit. It is considered a land use "by right" permitted under Oregon Revised Statute (ORS) 215.283 (1). Staff included possible conditions for a firearms training facility that is allowed outright that has met conditions since 1995. The statute also states that counties may require additional standards to meet local concerns. The application is being treated as a land use decision but the Planning Commission can impose conditions, if necessary. The original leased area was eighty-five (85) acres, and the application requests a thirty-five (35) acre expansion. She read the definition of a firearms training facility according to the statute. Mrs. Mabbott indicated that there are several letters and affidavits from founding members of the club to demonstrate that it has been operating in the current location since 1993, with first formal training occurring in 1994. The Planning Commission must decide if the application meets the definition of a firearms training facility and then can decide whether or not to impose conditions.

Mrs. Mabbott said that there will be discussion on whether or not this is a farm use. She advised that the issue is not whether or not this is a farm use. It is not a farm use, but there is a list of approved non-farm uses and this is a Sub 1 use on this list. Mrs. Mabbott displayed an aerial map of the applicant showing the 7 dwellings within a 5 mile radius.

Commissioner Rhinhart asked if the facility was ever permitted to begin with. Mrs. Mabbott stated that it did not currently have a permit, and that is why they were coming forward now. The state legislature had added this particular use to the uses allowed on farm ground. A member from the club, Andy Millar, came to get a permit for storage buildings at the site, and this is how the matter came to the attention of the Planning Department. Commissioner Standley asked if it had been on the tax roll, and Mrs. Mabbott replied that there is also a dwelling from the subject parcel on the tax roll. He commented that the matter before the Planning Commission was not whether or not they could be there, because they are grandfathered. Mrs. Mabbott agreed that was the staff interpretation, unless the Planning Commission found that there was not enough evidence to show that it had been a firearms training facility since 1995. She stated that it clearly is more than just a firearms training facility for law enforcement, but most firearms training facilities are. The question is whether or not it meets the criteria in state statute for a firearms training facility as of 1995. Staff had determined that it did meet the criteria. Commissioner Standley asked if the 35 acre expansion was the reason it was before the Planning Commission or the existence to begin with, and Mrs. Mabbott said it

was both. The application was processed administratively; staff made a preliminary determination of approval and then comments were received from adjacent landowners during the public notice process. That is why this matter was before the Planning Commission.

Applicant Testimony: Andy Millar, 84240 Weiss Road, Milton-Freewater, OR. Mr. Millar stated that he was representing the applicant, and was the past president. Chairman Randall asked if Mr. Millar wanted to add anything to the evidence already submitted. Mr. Millar said that he wanted to address the matter of gun safety as mentioned in the opponent's letter. He stated that safety is the most important thing that the club promotes. They have 29 certified range safety officers, through the National Rifle Association (NRA). He attended a week long gun range management course sponsored by the NRA to learn how to properly run a gun range; safety issues, management and how to keep lead levels down on the course. They have hired a company to come and remove the lead from the range last year and have an agreement with the land owner to maintain this program. The gun club has a very active board of directors, and hosts many shooting events; cowboy action, handgun and long rifle ranges. In addition to having range safety officers, they now require new and renewing members to attend a safety class before their membership is approved. There is a flag system on the range to control shooting, such as the black flag that indicates a cease fire. The black flag is raised whenever someone is spotted on any adjacent parcels. The rifle range runs southeast from the house on the property, and this is also shut down when people are on the adjacent properties. They have installed earth berms in addition to the natural slope of the ground as barriers to neighboring lands. Mr. Millar stated that adjacent landowners should not be concerned about safety, as it is the priority of the gun club. They have to be able to carry liability insurance, and so they do not want to have any accidents at the club. They have to be safe in order to have the club at all. They communicate with adjacent landowners and won't shoot if someone is out there. He described where the various ranges were and the direction they lay.

Mr. Millar explained that only members have access to the club by means of a gate controlled by a computer that logs time of entry and exit and who is entering. This gate can be controlled remotely and the club is not available prior to 8 a.m. and after dusk. The only time someone is at the club prior to 8 a.m. is when they are hosting an event and setting up for it. Mr. Millar stated that the land owner's daughter had submitted a letter stating that a member of their family had been killed in a hunting accident years ago and that is why the land owner was supplying the land to provide the club with a safe place to provide hunter safety education. This letter from the land owner also stated that in all the years that the gun club had been present at this location, they had never experienced a broken window or bullet hole in any of their farm equipment, vehicles or the dwelling on the subject property.

Mr. Millar described the other types of services provided by the club to the public. They provide the range open to hunters before hunting season to sight their rifles, and provide hunter safety education for all ages. They host NRA Women on Target classes to teach women how to shoot and safely handle guns, and have 6 more of these classes

scheduled for 2014. This past year they hosted their first "First Shots" class for first time handlers, sponsored by the National Shooting Sports Foundation. They put 80-100 kids per year through their beginners handling class and hunter education class. Part of the class is offered online through ODFW, but kids must attend the field day to complete the certification process. People come from as far away as Idaho and Medford, OR to attend this class because it's not available anywhere else. In addition to these services, the range is used by the military, WA State Penitentiary, VA officers and other law enforcement agencies for sniper training and certification.

Commission Rhinhart asked if they are funded by membership dues, and Mr. Millar replied that they do charge \$50 membership dues and have 780 members. He also said that they receive grants from Friends of the NRA that help sponsor some of the educational events. They also receive funding from the Oregon Department of Fish and Wildlife (ODFW) for backstops and restrooms.

Commissioner Rhinhart asked about hours of operation. Mr. Millar said that the range is open 7 days a week to members from 8 a.m. to dusk unless there is a scheduled event or law enforcement agencies are conducting training, which generally goes on during the week. They host "Cowboy Action" and clay shooting once a month. The range is closed for all hunter education and Women on Target classes. Evening shoots are finished well before 9 p.m. during summer hours, as there is no lighting system at the range.

Applicant Testimony: Verl Pressnall, 524 N. Elizabeth St, Milton-Freewater, OR. He is the current president of the club, and has been member for 6 years. Mr. Pressnall explained that they had been working with the Walla Walla gun club, as they are going to lose their range area in the near future because it is on the airport grounds. In regards to the expansion, they wanted the extra area mainly for the 4-H clubs that use the facility. They also sponsor the Milton-Freewater Jr. Show competition for small bore rifle, pistol, air rifle and shotgun. The 4-H now recognizes 5-Stand shooting, so they want to put in an area for the 4-H kids to shoot trap and skeet. Mr. Pressnall stated that the 35 acre area that would have been the expansion is no longer available for lease, so they no longer have plans for this expansion. They would have had to install a shot curtain to get a grant from ODFW for 350 yards for proximity, up to 30 feet in the air and 1100 feet long.

Mr. Pressnall explained how certain guns and ammo cannot be shot in particular areas of the range. They restrict heavier ammunition in certain areas for safety reasons. He also explained the safety flag system on all ranges and what each color of flag means; red means that live fire is happening at that time. If anyone violates the safety protocols, they are no longer a member of the club. He explained the card access system on the computer with remote access. Commissioner Rhinhart asked if anyone had ever been expelled from the club, and Mr. Pressnall said it did happen once. He also stated that there has never been any kind of shooting accident or injury on the range. Commissioner Standley asked if there had ever been any complaints, and Mr. Pressnall said he was not aware of any. He stated that they cooperate with the farmers that contact them, but that there was one farmer who would not contact them.

Commissioner Wysocki asked about the access to the range. Mr. Pressnall explained the card lock system that is computer controlled. The gate area is completely fenced in, but not the entire range. They hope to plant some evergreens on the west side as a wind break and access deterrent. Commissioner Wysocki asked about the insurance carried by the club. Mr. Pressnall stated they carry liability insurance, which is very expensive.

Proponent Testimony: Charles Danforth, 225 Maple Avenue, Milton-Freewater, OR. Mr. Danforth is a member of the club and a range safety officer. He also performs caretaker duties such as garbage removal, so he is out there every Monday and Tuesday. He stated that there is a strict adherence to the safety protocol even when there is no scheduled event going on and people are just out there shooting. He described a recent incident where the range was shut down due to the presence of a farmer on the adjacent parcel. Mr. Danforth stated that they are tightly monitored by the NRA and by state regulations. They absolutely do not want any accidents in the current climate of gun control, so they are very careful. He discussed all the training events held at the gun club, and informal training that goes on. He talked about the increased interest for women wanting to safely handle guns, so clubs are being formed to address this. He stated that it is important for anyone who has a gun to know how to safely handle it.

Proponent Testimony: Gregory Bond, 10 Wilkenson Court, Milton-Freewater, OR. Mr. Bond stated that he is in favor of the gun club, and is a member. He discussed his past experiences with firearms, and spoke about the positive nature of the gun club. He spoke about the ability to have a safe place to shoot instead of having people out shooting up the countryside. He stated that the events sponsored by the club have brought economic benefit to the community in people coming from long distances, and sales of guns and ammunition at local businesses. He described an excise tax through the federal government that comes back to the state and county as a result of ammunition and gun sales.

Neutral Testimony: Arlo James, 335 NE Dallas Street, College Place, WA. Mr. James stated that he has been a member of the Walla Walla Muzzle Loaders Club since 1968. He wanted to state that this is a much needed facility and encouraged the Planning Commission to allow the gun club to proceed.

Proponent Testimony: Mike Breiling, 71640 Lake Drive, Pendleton, OR. Mr. Breiling stated that he is an attorney, but present as a member of the gun club. He stated that this gun club is the only legal place to shoot, other than public land, from the Bend area to Clackamas, and east to the Hilgard area down through the John Day area. This is a rare facility for the state and the club hosts shooting events that bring people from out of town. They were able to host the Single Action championships in the area, as well as muzzle loading competitions. The National Guard brings people in as well for training. All of these out of town events bring economic revenue to the community. He stated that this is the only safe place to shoot. Recreational shooters do not want to shoot someone by accident and take this very seriously. Mr. Breiling stated that there is a need in this community for a facility to have a safe place to shoot.

Proponent Testimony: John Jay, retired attorney that formerly represented Yakima and Clallam County. Mr. Jay pointed out that there are no firearms that are discharged to the north of the range. Firearms are discharged only to the south of the range.

Proponent Testimony: Suni Danforth, 225 Maple Ave, Milton-Freewater, OR. Mrs. Danforth wanted to speak in support of the gun club as a woman. She is a member of the club, and a range safety officer. There is a fast growing interest for woman in the safe handling of firearms. She wanted to point out that there is an archery area in the range. They have members who live on the Oregon coast, Portland and other far away places, and come here because it is the only established range in this part of the state. She stated that the application met the criteria and would support approval of the application. Mrs. Danforth also spoke about the economic benefit to the community when people come from out of town to attend the shooting events. She talked about a gravel pit where people shoot that is not safe due to the possibility of ricochet. She stated that the gun club was NRA approved and sponsored by the ODFW as well, and membership was a good bargain at \$50.00 per year.

Chairman Randall asked for a show of hands from people present to support the application. Nearly all of the people present in the audience raised their hands.

Opposition Testimony: Patrick Gregg, 222 SE Dorian, Pendleton, OR. He is an attorney with Corey, Byler and Rew and is representing the Rea family and their farming corporation. Mr. Gregg cited the state statute for a firearms training facility as ORS 197.770. He stated that there are requirements that have to be met to qualify as a firearms training facility. It cannot just be people out shooting in a field, no matter how many safety prescriptions are put in place. As of September 9, 1995, for a facility to qualify as a firearms training facility under this statute, the facility needed to be issuing certifications to law enforcement. He stated that the applicant did not provide evidence of this in the record. The second criteria, under Sub Section B, stated that the organization had to have been issuing certifications under Fish and Wildlife or some other agency. Mr. Gregg stated that Mr. Millar was issuing the certifications at that time, and not the gun club. Mr. Gregg read the language from the statute for the third and final criteria; the organization must hold shooting events that are part of nationally recognized programs that promote shooting matches, target shooting and safety. Mr. Gregg said that there were letters submitted from proponents that they were out there shooting skeet and trap at the facility, and this does not meet the language of the statute.

Mr. Gregg presented maps that he wanted entered into the record. He showed a 1994 US Geological Survey map of the subject parcel. He stated that there was nothing on the map that showed the presence of a gun range. He compared that to a 2000 map that showed development. This showed that there was not enough evidence to meet ORS 197.770, and the gun club should not fall under the protection of this statute.

Mr. Gregg stated that he disagreed with the Planning Staff analysis of the law, and what this statute protects. He cited a recent Oregon Court of Appeals case that just came out

on December 18, 2013 that deals with this statute. He stated that this statute only protects a facility as it existed on September 9, 1995. He quoted language from the Oregon Court of Appeals case where Representative Adams clarified that the bill referred to facilities in existence and would not include expansion of existing facilities. Mr. Gregg stated that this was the clearest guiding principle. He stated it would be improper to grant the permit based on this information. He referred to the application and the intent to build several new buildings, and stated that this should not be allowed per the Oregon Court of Appeals case.

Commissioner Rhinhart asked about the pictures presented and how they relate to the statute. Mr. Gregg stated that in order for the gun club to be covered under the statute for a firearms training facility, the gun club would have had to have been developed in 1995 to the point as shown on the 2000 survey aerial/map. Mrs. Mabbott asked Mr. Gregg to describe the difference he saw in the 1994/2000 US Geological Survey maps. Mr. Gregg replied that according to the statute, the firearms training facility on Exclusive Farm Use (EFU) would have had to have met the requirements of this statute as of September 9, 1995. He also stated that the reason that this statute was passed was to protect facilities that may have been in place up to that point. Mrs. Mabbott stated that the development he was describing in the pictures, such as roads and earth berms, were not something that would require a permit in the first place. Mr. Gregg said that the definition of a firearms training facility was set out in ORS 197.770 and that if it had been permitted, it would not have been permitted for further development. Chairman Randall asked if that meant the club was not allowed to have new members. He said that the natural progression of a club that enlarges would mean they would need more areas and buildings. Mr. Gregg stated that the facility would not meet the statute criteria and that one could not reasonably disagree with the legislature. He said if a facility qualified under the statute in 1994 with two buildings and two ranges, that is all that would be allowed and nothing more could be added on in the future.

Commissioner Standley stated that he questioned the quality of the photograph submitted by the opponent because the technology of aerial photographs from 1994 are very different from what can be found today using Google. Mr. Gregg acknowledged that it was his prerogative as a Commissioner to question the evidence, but that the proposed expansion of 35 acres by the applicant that were clearly not in place in September 1994 should also not be covered by the statute. Commissioner Standley commented that the history was there for the land use as a gun club, so the Planning Commission has to decide whether or not to allow more structures to an existing use. Mr. Gregg replied that the gun club bears the burden of proof to show that what they were actually doing in 1994 satisfied the requirements of the firearms training facility statute. Commissioner Standley asked why the opponent felt that these requirements were not satisfied. Mr. Gregg stated that he had explained this, but there was no evidence of law enforcement certification or training being done in 1994/95 and that there was no evidence of trap shooting occurring through a nationally sanctioned organization. He stated that the affidavit provided by Mr. Millar showed that he was issuing the hunter safety certifications, and not the gun club applicant.

Opponent Testimony: Dennis Rea, 84224 Spofford Road, Milton-Freewater, OR. Mr. Rea read from a prepared statement. He said that they have been farming the land north of the cemetery, adjacent to the gun club, since 1950 and he is a third generation farmer. His son, Nathan, recently returned to the farm and is the fourth generation farmer. He gave a description of their family history on their land. He stated that they are gun owners, gun users and are sportsmen. They are strong supporters of the 2nd Amendment, women shooting, boy scouts and 4-H. They have been open to responsible hunting on their property for many years and have given permission for hunting of deer, elk and birds. They request that the East End Rod and Gun Club land use application on EFU zoned land be denied. He stated that they strongly believe that the gun club should find a more suitable location in a non-EFU zone. He referenced a Union Bulletin newspaper article about the membership that has grown quickly to nearly 800 members. He said that the majority of the members are not Oregon tax paying residents. The Planning Commission has the opportunity to make decisions that are best for the long term for the community of Milton-Freewater. He stated that the CRP contact has ended and the land of the subject property is now being farmed. His home is less than 1.3 miles away from the northern most portion of the gun club and will be less than a mile if the range expands. He discussed the types of crops grown in the area and the value of the land and crops to the community and state. There are farm workers in the field working all year long. Mr. Rea stated that it was important for local leaders to make decisions that would protect rural farm lands and referenced the Oregon land use laws for farm zoned lands.

Opponent Testimony: Nathan Rea, 84894 Hood Road, Milton-Freewater, OR. Mr. Rea stated that he was a resident of Oregon, except for the last eight years when he was living in Washington D.C. He stated that the gun club is a constant producer of noise. He stated that the gun shots can be heard possibly seven days a week. His parent's house is 1.3 miles away from the gun club. He asked to submit a DVD recorded the previous weekend from their parent's home. This DVD shows a 3-hour space of time, and he estimated that within the first hour there are approximately three shots per minute heard. Mr. Rea discussed another event that had happened the previous Saturday at 8:30 a.m. His father stepped out on the east side, away from the gun range, and heard a very large boom. He stated that this is no longer a place where five guys get together and trap shoot, it is a very large organization of 800 members that hosts large events and has law enforcement come in for training. Mr. Rea displayed some enlarged photos of the area and showed where his parent's house is in relationship to the gun club. He stated that people visiting the nearby cemetery are probably opposed to the noise of gunfire while they visit their family gravesites. They have also spoken with residents around the area near Eastside Rd and Miller Road who also hear the gunfire. He has talked to hunters who hunt land to the east, and he said the gunfire probably impacts their hunting.

Mr. Read stated that there is no mention of noise in the gun club application, but the county findings indicate the applicant intends to plant a row of trees for windbreak. He also stated that the county findings do not impose a condition of planting trees, if water is not available. He stated that the trees will not prevent the sound from carrying. He stated that the noise from the gun club will have a lasting impact on the community of

Milton-Freewater. He stated that the community will have to expand and this should be considered in this decision.

Mr. Rea discussed the issue of safety on their farm. They have crews working in the fields directly adjacent to the proposed 35 acre expansion area for the gun club. He displayed a photo showing their farm land relative to the existing gun club and the proposed 35 acre expansion. He stated that he trusts what has been said earlier from the applicant about their safety procedures, but that there may one person who does not follow the rules. He referenced a magazine article about the growth of gun clubs, and expressed concerns about this growth impacting the area. Mr. Rea talked about the black flag safety system, and that there was confusion about this. He said that the gun club activity could significantly impact their farming operation by changing their irrigation and crop health. Mr. Rea discussed the size of ammunition and "shot-drop" and cited references he got from local ammunition dealers. He stated that the range poses a potential fire hazard for the surrounding wheat farms. During the summer months, the wheat fields are a tinder box. He asked for all their photos and materials to be entered into the record. Mr. Rea showed an enlarged photo and discussed where the guns are shot and compared distances of the ranges to local roads and dwellings. Commissioner Rhinhart asked where their ground was on the photo. Mr. Rea showed where their land was on the photo. He discussed the safety issues in relationship to the size of guns being fired, the speed of the gunfire and the ammunition being used. Mr. Rea showed on the enlarged photo where each of the ranges was and the direction of the ranges where guns were being shot. He discussed the proposed trap and skeet areas and where they would be. Mrs. Mabbott commented that the 35 acre expansion was no longer being requested by the applicant. Mr. Rea stated that it could still be an issue some day in the future.

Chairman Randall acknowledged that Mr. Rea had expressed their concerns about safety. Mr. Rea stated that the proposed shotgun ranges and any other developments on the range that pose a safety threat will significantly increase their cost of farming. He stated that their irrigated farm land abuts the gun range, and was completely ignored by the county documents. He stated that the cost of having to add time to jobs to insure the safety of their employees will increase their costs. He said they have workers on these roads and lands changing pipes all the time. He asked how they could be assured that the gun club would cease activities when their workers were in the area conducting farming activities. He stated that having to call the gun club to advise them of their farming activities would significantly increase the cost of production due to delays.

Mr. Rea discussed how the presence of the gun club would negatively affect the value of their land and the surrounding community of open spaces, high value crops and wine. He said that having a firearms training facility in the area will have a significant impact on land value if people want to develop the lands to the east from the city. He stated that he has heard this same concern from other land owners in the area, and has letters from adjacent land owners.

Mr. Rea said that this gun club needs to find a new home, outside of high value farm use ground. This property is not the place for a firearms training facility.

Commissioner Marlatt asked if they had done any measurements of the noise level at the adjacent dwellings. Mr. Rea said no, but they have the DVD audio recording they are submitting for the record.

Commissioner Standley asked if they had any incidents with the gun club over the last twenty (20) years and if any windows had been shot out or bullet holes in their farming equipment. Mr. Rea replied no, there have been no such incidents. They are still very concerned about the thought of the gun club expanding.

Chairman Randall asked where their family hunts. Mr. Dennis Rea replied that he hunts on his land, and shoots at coyotes. Chairman Randall asked if he knew what was behind that coyote when shooting at it. Chairman Randall asked if he had ever used the facility, and Mr. Dennis Rea stated that he had not used the facility as he was a busy farmer. Chairman Randall asked if Mr. Rea participated with the gun club's black flag system and did they call the gun club when they were going to be conducting farming activities near the range. Mr. Rea stated that the gun club had never notified them of the flag system. Chairman Randall clarified that they did not call the gun club when they were farming in adjacent lands because their lands were to the north, and all shooting was to the south. Mr. Rea stated that the shooting has not been at their ground to this point, but it still makes them nervous.

Commissioner Rhinhart asked if the gun club had come and talked to them back in 1994 when they were starting up. Mr. Dennis Rea replied that he had heard they were doing 5 man skeet shooting, but hadn't talked to the gun club. Commissioner Rhinhart asked if there was any way they could offer some conditions that would help them support the applicant, such as limited hours of operation. Mr. Rea stated that their position was outlined in their letter of opposition to the application.

Mr. Gregg stated that their position was two-fold; on the legal question, they contend that the application does not meet the state statute for a firearms training facility based on what was present in 1995 and is contrary to state law. If the Planning Commission were to approve the historical footprint and find that the application did meet the state statute, they would suggest imposing a limit of shooting times to begin at 10 a.m. on weekends, and stopping at 7 p.m. in the summer time. They would also ask that any piece of the facility that falls under the statute and would be acceptable as of 1995, needs to satisfy the NRA standards range book. They would also ask for additional clarity on when the range would be shut down if there was a farming use conflict. They would need more specific conditions on how the facility would be shut down when conflicting with farming practices. Mr. Gregg requested that the record remain open so that they may submit written guidelines.

Mr. Nathan Rea stated that the gun club needs to be in a different place. Chairman Randall asked if Mr. Rea had an idea of where would be a better place to locate the gun club, and he did not have any suggestions. Mr. Rea said the entire county is not EFU, so

there has to be another place available. Commissioner Standley has a gun range in Pilot Rock so he understands the concerns, but he feels that the education provided to young people is the greater good. Mr. Gregg requested that their pictures and DVD be entered into the record.

Commissioner Williams asked if the Rea's hunted on their own land next to the gun club, and if so, was it possible that they were shooting at or near the range. Mr. Rea stated that farmland is a traditional place for hunting. They do have people that hunt in their corn fields, and where they hunt is to their own discretion. The people he talked to hunted farther up in the foothills. Commissioner Rhinhart stated that they have a trap shoot range in La Grande that is pointed at the highway.

Mr. Rea commented that this was a critical land use issue and that the Planning Commission should not rush to a decision. He stated that there must be room to make this work someplace else, but it is not his job to find an alternative location. He said that the current location is one mile from the Milton Freewater Urban Growth area.

Commissioner Rhinhart asked if they knew what types of soils were on the subject property. Mr. Rea replied that he thought it to be class 2, or High Value soil. Discussion followed on soil types, and crop production with irrigated ground. Commissioner Standley stated that he found that there was a 30% slope to the east from Google Earth. Mr. Rea said he didn't know about his. Commissioner Standley said that the facility sits below exposure to the east.

Mrs. Mabbott asked Mr. Gregg to identify the Court of Appeals case that he cited earlier in his testimony. He stated it was named Conrady vs. Lincoln County, in the Oregon Court of Appeals.

Proponent Rebuttal: Verl Pressnall, representing the applicant presented rebuttal. In response to Commissioner Standley's question about the 30% slope, Mr. Pressnall stated that there was a 40 foot bank. When running the "Cowboy Action" event, they shoot a lower caliber ammunition that cuts down on the ricochet. They use rifles that shoot a pistol caliber, typically a "38 special". Mr. Pressnall noted that the long range target is not pointing at the roadway at any time. There is approximately 300-350 feet of up slope at the far end of the property from the long range rifle area. He described trajectory and how a bullet flies. Their farthest target is 600 yards away. Mr. Pressnall said that they limit the types of rifles that can be shot there at the range. Mr. Pressnall commented on the gravel pit that is 3/4's of a mile away towards Milton-Freewater. He said they often get blamed for loud noises coming from that way, which is the blasting at the gravel pit. When he gets a call about loud noises, he checks the computer access log and finds that no one is at the range at the time of the loud noise. The gun club is looking at installing camera systems for further monitoring of range activity.

Commissioner Standley asked how many shots are fired in an average 8 hour day at the range. Mr. Pressnall said there is, on the average 12-15 people at the range in a day. They are typically sighting in a scope and shooting around 20 rounds. The police departments who use the range typically use more rounds than the members. Commissioner Standley asked if they had ever considered noise abatement measures. Mr. Pressnall said they had discussed the evergreen trees as a noise and wind barrier, and he had read that other gun ranges were using block walls. These require a concrete base, and they are not allowed to do that according to their lease. Mr. Pressnall discussed another possible solution called a baffle berm on the back end of the range. Commissioner Standley asked about putting baffles around the rifle tables, and Mr. Pressnall said the biggest problem was the wind. Again the lease prohibits them from using any concrete footings. They currently use large straw bales around the pistol range. Commissioner Standley asked Mr. Pressnall to discuss the issues about the presence of a firearms training facility in 1995. Mr. Pressnall said he was not involved in the club at that time, and the person who was involved in the certification process at that time was not able to be present at the hearing. The person who was supposed to testify about this is in charge of the Washington State Penitentiary SWAT team and they were called away at the last minute.

Mrs. Mabbott asked how much of the subject property was used for the gun club in 1994. Mr. Pressnall said they were leasing 48 acres and using 92 on a handshake agreement. They were using fence posts for targets back in 1994, using 1 x 4's to hold the cardboard targets. Mr. Jennings asked what year the first lease was signed, and Mr. Pressnall said that it was done by handshake the first several years because the owner, Pete Vonderahe, did business like that. Mrs. Mabbott asked what was in place in 1995. Mr. Pressnall said there was a cargo storage container, and a sporting clays trailer that had five different throwers on it with shooting stations. The rifle range side had portable benches from the VA. Mrs. Mabbott asked about the footprint, and Mr. Pressnall replied that they had full use of the 92 acres. She said that they could submit additional documentation to show this. Commissioner Standley asked why it needed to permit the facility if it was an outright use. Mrs. Mabbott said they would be making a record that the facility meets the definition of a firearms training facility in use since 1995 and that they can continue the use. Mrs. Mabbott said she needed to review the court case referenced by Mr. Gregg with the County Counsel, Doug Olsen. Commissioner Williams said they should not base their decision on this one case cited by the opponent. Commissioner Standley asked Mr. Pressnall if the conditions offered by the opponent would be agreeable to the applicant. He stated that their shooting events typically start at 9 a.m. on the weekend. Some people come from out of town, and starting later would be inconvenient to them for travel reasons. They also have to consider the temperature in the summer afternoons.

Mrs. Mabbott stated that if the Planning Commission finds that the applicant has met the definition, there needs to be documentation of the scope of the facility in 1995. Mr. Pressnall said that he had spoken with one of the Boy Scout leaders who said they had been using the range since 1996. The 4-H groups have been using the facility since the very beginning. Mr. Jennings asked about their liability insurance and who required it. Mr. Pressnall indicated that their insurance was required by the NRA and they have had

this insurance since 1994 since they purchased their 5 stand trailer. The ODFW also require liability insurance to be carried when they are applying for grants. Commissioner Wysocki asked about by-laws, and Mr. Pressnall stated that the original by-laws were incorporated in 1947 but at a different location. The club used to meet in an indoor range in Milton-Freewater, and had some outdoor shooting at Parent's Dairy.

Chairman Randall asked Mrs. Mabbott what options they had available to them. Mrs. Mabbott explained that they can leave the record open for 7 days for both sides to submit additional information. They can make a decision tonight or they can continue the hearing until January. They do have to make a decision within the 150 days unless the applicant agrees to waive the 150 days requirement. Chairman Randall stated that he still did not understand why they were trying to permit this facility if it was an outright use. Mr. Jennings explained that it was only an outright use if the Planning Commission determined that the gun club had met the criteria for a firearms training facility. Mrs. Mabbott said that the Planning Commission can make that determination and then they can decide if they want to impose conditions. Discussion followed on how to proceed. Commissioner Standley asked if this was a new application and Mrs. Mabbott confirmed that it was new. Mr. Gregg asked to make a few final comments, but Chairman Randall stated that the applicant has the final word of rebuttal in this hearing. Mr. Gregg asked that the record remain open. Mr. Pressnall also requested that the record remain open as well.

Commissioner Wysocki said that he was uncomfortable making a decision until he had read more on the court case cited by the opponent. Commissioner Rhinhart would like to see additional documentation on when the applicant began issuing certifications and conducting training and education classes. Chairman Randall asked if the Planning Commission had any more questions for the applicant. Commissioner Wysocki asked about what safety programs were in place when the facility was first opened. Mr. Pressnall said he was not present at the beginning and could not answer this question. Commissioner Rhinhart suggested that they have a yearly meeting with adjacent land owners to discuss any concerns that the adjacent land owners may have. Mr. Pressnall said that the only farmer they met with is no longer in the area. Mr. Pressnall stated that they have tried to look for another place, and it has been very difficult to find another location. Commissioner Williams stated that she would like to hear more from both sides. Mrs. Mabbott asked if the applicant would be willing to waive the 150 day requirement. She explained that the Planning Commission is appointed by the Board of Commissioners and is the first word in decision making. If one party does not agree with this decision, they can appeal it to the Board of Commissioners. Mrs. Mabbott said she had some notes about what the Planning Commission wants to hear at the next hearing, and they did not have to hear additional testimony on issues already covered at this hearing. Mrs. Mabbott clarified that they wanted to hear more about the court case cited, and more information on what training and certifications was being conducted in 1995 and what the footprint was in that year. Mrs. Mabbott said that does not preclude them from hearing other testimony.

Mr. Pressnall indicated that he would sign the waiver for the 150 day requirement as the applicant.

Mr. Gregg said he would hold his comments until the next hearing. Chairman Randall stated that they wanted specific testimony on the footprint and court case and did not need to revisit the noise and safety issues. Mrs. Mabbott also suggested both parties come with possible conditions of approval to the next hearing.

Chairman Randall continued the hearing until January 23, 2014. The continued hearing in January will be held in this same location. He adjourned the meeting at 10:28 p.m.

Respectfully submitted,



Gina Miller
Secretary

Adopted by the Planning Commission January 23, 2014