

Umatilla County

Department of Land Use Planning



AGENDA

Umatilla County Planning Commission
Public Hearing
Thursday, December 11, 2014, 6:30 p.m.
Justice Center Media Room
Pendleton, OR

Members of Planning Commission

Randy Randall, Chair
Gary Rhinhart, Vice-Chair
John Standley
Tammie Williams
Don Wysocki
David Lee
Don Marlatt
Suni Danforth
Cecil Thorne

Members of Planning Staff

Tamra Mabbott, Planning Director
Carol Johnson, Senior Planner
Shane Finck, Planner

1. Call to Order

2. Approval of Minutes:

Minutes from October 23, 2014.

3. New Hearing:

- LAND USE DECISION, #LUD-174-14, applicants/property owners Sam and Rosella Humbert. The applicants request an interpretation and/or clarification of Condition A, a condition of approval made by the Planning Commission in their 2005 approval of Land Use Decision, #LUD-012-05 for "verification of non-conforming use" on Tax Lots 1901, 1903 and 1904, Assessor's Map 6N 35 25C. Condition A states the following: "The heavy equipment operations base (contractor storage) and scrap yard/salvage yard be confined to the three legal non-conforming parcels (Tax Lot #1901, 1903 and 1904) that existed prior to aerial photos taken in 1977 and have been in continuous operation for ten years prior to June 29, 2001." The process followed for the land use decision application is found in the Umatilla County Development Code, Sections 152.612, 152.770 and 152.771.

4. Status of Appeals or Board Actions:

5. Election of Officers

Next Scheduled Meeting:

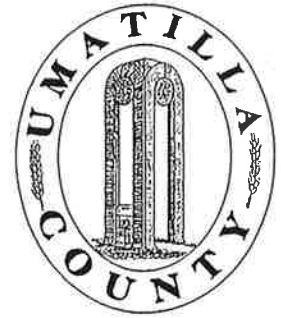
Thursday, January 22, 2015, 6:30 p.m., Justice Center Media Room, Pendleton, OR

**HUMBERT LAND USE DECISION, #LUD-174-14
DECEMBER 11, 2014 PLANNING COMMISSION HEARING
EXHIBIT LIST**

1. Staff Memo, page 1
2. Exhibit #1, Property Maps, pages 2 & 3
3. Exhibit #2, Staff Report, pages 4-15
4. Exhibit #3, Applicants' Application, pages 16-25
5. Exhibit #4, Narrative by Leslie Ann Hauer, pages 26-30
6. Exhibit #5, 2005 Land Use Decision and Letter, pages 31-35
7. Exhibit #6, Applicants' 2005 Support Letters, pages 36-39
8. Exhibit #7, Adopted Minutes from October 27, 2005, PC Hearing, pages 40-43
9. Exhibit #8, Transcription of October 27, 2005 PC Hearing tapes, pages 44-59
10. Exhibit #9, Planning emails, pages 60-63
11. Exhibit #10, Comments from Gloria McMunn Williams, page 64

Umatilla County

Department of Land Use Planning



December 3, 2014

DIRECTOR
TAMRA MABBOTT

LAND USE
PLANNING,
ZONING AND
PERMITTING

CODE
ENFORCEMENT

SOLID WASTE
COMMITTEE

SMOKE
MANAGEMENT

GIS AND
MAPPING

RURAL
ADDRESSING

LIAISON, NATURAL
RESOURCES &
ENVIRONMENT

MEMO

To: Umatilla County Planning Commissioners

From: Carol Johnson, Senior Planner

Re: December 11, 2014, Planning Commission Hearing,
Sam and Rosella Humbert, Applicants
Land Use Decision, #LUD-174-14
Tax Lots 1901, 1903 & 1904, Map 6N 35 25C

cc: Doug Olsen, County Counsel
Tamra Mabbott, Planning Director

Sam and Rosella Humbert request interpretation/clarification of "Condition A." Condition A is the condition of approval applied by the Planning Commission in 2005 for a Verification of a non-conforming use application.

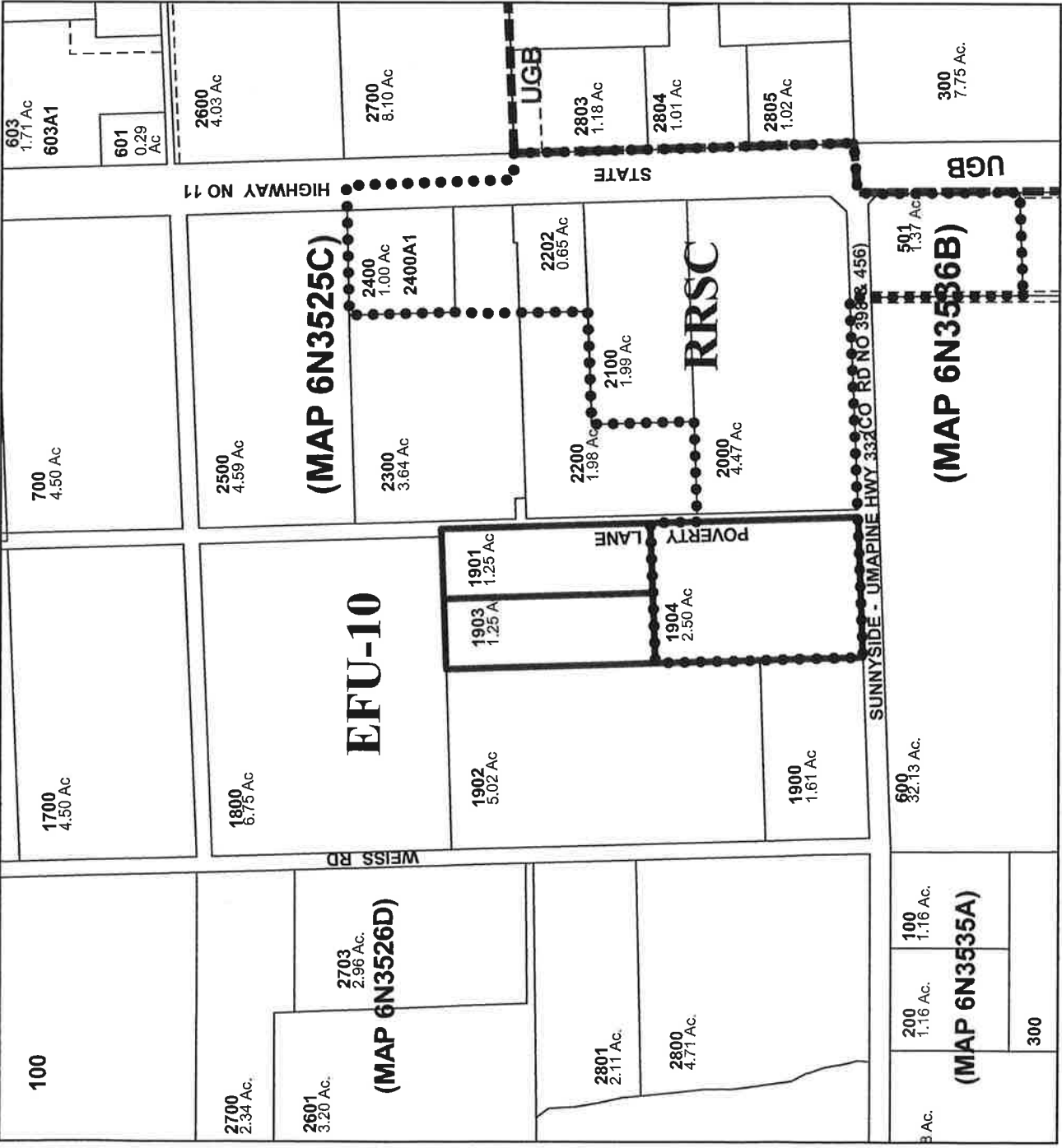
To assist the Planning Commission in making a decision the Commissioners' packets include in part: the 2005 Planning Commission adopted minutes, the 2005 Land Use Findings and a transcription of the 2005 Planning Commission recording tapes.

The Land Use Decision made in 2005 by the Planning Commission *is not* once again being decided. That decision has been made. The 2005 Land Use Decision Condition A allows the Humberts to operate a "heavy equipment operations base (contractor storage) and scrap yard/salvage yard." The applicants request interpretation of what specifically is allowed in "Condition A."

①

PROPERTY OWNERS WITHIN NOTICE
AREA OF SUBJECT PARCELS

- MAP 6N3525C
 700 DIBBLE DANA & TAMMY
 1700 MORRIS SUZANNE A
 1800 MORRIS SUZANNE A
 1900 ROLOFF FARMS INC
 1901 HUMBERT ROSELLA I (TRS)
 1902 ROLOFF FARMS INC
 1903 HUMBERT SAM E (TRS)
 1904 HUMBERT SAM E (TRS)
 1904A1 PENDLETON GRAIN GROWERS INC
 2000 M-F DRIVE IN THEATER LLC
 2100 DUFUR WILLIAM S & CAROL J
 2200 HUMBERT ROSELLA I (TRS)
 2202 KIMBALL WENDY R
 2300 HUMBERT ROSELLA I (TRS)
 2400 MILLER DEANA
 2400A1 J R ZUKIN CORP
 DBA MEADOW OUTDOOR ADVERTISING
 2500 NASRALLA OSAMA F
 2600 WALDEN ROBERT H & EVA M
 2700 PARENT EDNA & FERNALD CATHERINE
 2803 WILLIAMS GLORIA
 2804 WILLIAMS GLORIA
 FREEMAN DANNY (AGT)
 WILLIAMS GLORIA
 FREEMAN DANNY (AGT)
- MAP 6N3526D
 100 DIBBLE DANA A
 2601 CARSON EVERETT L & PATSEY
 2700 ACKERMAN RONALD B & JOANN
 2703 LEFORE JACK N JR & CAROL
 2800 LEFORE JACK N JR & CAROL
 2801 SANDBERG GLEN E & LINDA
- MAP 6N3535A
 100 CHAPPELL GEORGE L & PATRICIA B
 200 SWANSON MYRAN L & JANYCE L
- MAP 6N3536B
 501 KAUP FRED W SR & ERMA B (TRS)
 C/O SCHULZ & SCHULZ ET AL
 FARMERS PRODUCE OUTLET INC ET AL
 ROLOFF MARTHA J



LAND USE DECISION #LUD-174-14
 SAM & ROSELLA HUMBERT, APPLICANT / OWNER
 MAP 6N3525C, TAX LOTS 1901, 1903 & 1904

SUBJECT PARCELS

DATE: 11/19/14

MAP DISCLAIMER: No warranty is made by Umatilla County as to the accuracy, reliability or completeness of this data. Parcel data should be used for reference purposes only. Created by J. Alford, Umatilla County Planning Dept.



Google earth

feet
meters



3

**UMATILLA COUNTY PLANNING DEPARTMENT
PRELIMINARY FINDINGS AND CONCLUSIONS
HUMBERT LAND USE DECISION, #LUD-174-14
MAP #6N 34 25C, TAX LOTS #1901, 1903 & 1904**

- 1. APPLICANTS:** Samuel and Rosella Humbert,
54841 Hwy 332, Milton-Freewater, OR 97862
- 2. AGENT:** Leslie Ann Hauer, 6100 Collins Road, West Richland, WA 99353
- 3. OWNERS:** Tax Lots 1903 & 1904 – owner, Sam E. Humbert Trust,
Tax Lot 1901 – owner, Rosella I. Humbert Trust.
- 4. LOCATION:** The subject property is located on the north side of Sunnyside-Umapine Highway (State Highway 332) west of the intersection of State Highways 332 and 11.
- 5. REQUEST:** The applicant's land use decision is a request for interpretation/clarification of "Condition A." Condition A is a condition of approval, applied by the Planning Commission in 2005 in their approval of the Humbert application for a Verification of a non-conforming use.
- 6. ACREAGE:** Tax Lot 1904 = 2.5 acres, Tax Lot 1901 = 1.25 acres and Tax Lot 1903 = 1.25 acres.
- 7. COMP PLAN:** Tax Lot 1904 – Commercial Plan Designation
Tax Lots 1901 & 1903 – Orchards District Agriculture Plan Designation
- 8. ZONING:** Tax Lot 1904 zoned for commercial use (RRSC),
Tax Lots 1901 & 1903 zoned for farm use (EFU).
- 9. ACCESS:** Tax Lot 1904 has access via Sunnyside-Umapine Highway and Poverty Lane, a 30-ft private easement. Poverty Lane provides access to Tax lots 1901 and 1903. Poverty Lane extends north from Sunnyside-Umapine Highway (State Highway 332) along the east side of tax lots 1904 and 1901. Although tax lot 1903 has right of use to Poverty Lane there are no recorded connecting easements found across tax lot 1901 to Poverty Lane.
- 10. ROAD TYPE:** Sunnyside-Umapine Highway (State Highway 3320, is a two lane paved state highway. Poverty lane is a graveled private road within a 30-ft wide easement.
- 11. EASEMENTS:** No information was provided on easements; however, deed information includes a utility easement for Pacific Power and Light, Book 87, Page 447, of the Umatilla County Deed Records.

- 12. BUILDINGS:** Tax Lot 1904: developed with two large shop buildings and one small building. In addition an 18,000 gallon LPG bulk storage facility, approved for Pendleton Grain Growers, is located in the area of the southeast corner of Tax Lot 1904.
Tax Lot 1903: undeveloped, however, one of the buildings developed on Tax Lot 1904 appears (aerial photos) to be partially located into Tax Lot 1903.
Tax Lot 1901: developed with two rental mobile homes.

13. PERMITS:

Tax Lot 1904

- Zoning Permit, #ZP-84-049, issued February 28, 1984 to Humbert for 30' x 18' replacement building.
- Zoning Permit, #ZP-88-016, issued February 9, 1986 to Humbert for 40' x 80' shop building.
- Zoning Permit, #ZP-04-209, issued September 15, 2004 to Pendleton Grain Growers for placement of a bulk storage propane tank.

Tax Lot 1901

- Zoning Permit #984 issued on March 17, 1975 to C. R. McMunn Jr, property owner, for one mobile home (14' x 70') on tax lot 1901. (A personal property 1975 Nashua mobile home owned by Clinton McMunn was verified by the County Assessor as arriving on tax lot 1901 in 1975.) The property is developed with two rental mobile homes.
- A personal property 1973 Glenbrook mobile home owned by William & Debra Pfaffle was also verified by the County Assessor as arriving on tax lot 1901 in 1974. (A County zoning permit was not issued for placement of the 1973 Glenbrook.)

Tax Lot 1903

- No development permits.

- 14. ADJACENT USES:** The Humbert's property, Tax Lot 1904, is a RRSC zoned parcel located along the north side of the Sunnyside-Umapine Highway (Hwy 332). Adjacent to Tax Lot 1904 (west side) is EFU zoned property developed with an orchard. To the east of Tax Lot 1904 is an RRSC zoned property developed with the Milton-Freewater outdoor drive-in theater. Adjacent and north of Tax Lot 1904 is Tax Lots 1903 and 1901 the applicants' two EFU zoned parcels, also part of this request. Tax Lots 1903 and 1901 adjoin parcels developed in orchard fruit to the west and north. To the east of Tax Lots 1903 and 1901 are two EFU zoned parcels (owned by the applicants) each parcel is developed with a rental mobile home.

- 15. LAND FORM:** Walla Walla Valley

16. SOIL TYPES: The subject property contains High Value soil types as determined by the *Soil Survey of Umatilla County Area, 1989, NRCS*. High Value Soils are defined in UCDC 152.003 as Land Capability Class I, II and Unique¹ Soils.

Soil Name and Unit Number, Description	Land Capability Class	
	Dry	Irrigated
29A: Freewater very cobbly loam, 0 to 3 percent slopes, a unique soil	4s	6s

Soil Survey of Umatilla County Area, 1989, NRCS. The suffix on the Land Capability Class designations are defined as “e” – erosion prone, “c” – climate limitations, “s” soil limitations and “w” – water (*Survey*, page. 172).

17. WATER &

SANITATION: Tax Lot 1901 is developed with two older mobile homes and both share a domestic well and septic system. Tax Lot 1904 is developed with septic system, information on the water supply was not provided.

18. UTILITIES: No information was provided on the utilities serving the properties; however, Pacific Power & Light serves some of the area.

19. RURAL FIRE: The subject parcels are not located within a taxed fire protection district. The local fire protection service is the Milton-Freewater Rural Fire Department. Rural residents may subscribe for fire protection from this rural fire department.

20. IRRIGATION: No information was provided.

21. FLOODPLAIN: This property is NOT in a floodplain.

22. PROPERTY & AGENCY NOTICES SENT: November 21, 2014.

23. HEARING DATE: December 11, 2014.

24. AGENCIES: Department of Environmental Quality (DEQ), Oregon Department of Ag, Department of Land Conservation, Oregon Water Resources, Oregon Department of Transportation, County Assessor, County Public Works and Pacific Power & Light

¹ USDA, *Soil Survey of Umatilla County Area, Oregon*, page 165, Unique Farmland. “Unique farmland soils are soils other than prime farmland soils that are used for the production of specific high-value food and fiber crops. These soils have a special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained yields of high-quality crops or specialty crops when treated or managed according to acceptable farming methods. Some of the orchard soils in the Milton-Freewater area are unique farmland soils. They have an available water capacity that is adequate for growing tree fruit when irrigated. These soils have the advantage of growing season, temperature, humidity, air drainage, elevation, and nearness to market that favor growth of tree fruit. 28A Freewater gravelly silt loam, 0 to 3 percent slopes, 29A Freewater very cobbly loam, 0 to 3 percent slopes.”

(6)

25. COMMENTS: A phone call was received from notified property owner, Gloria Williams. Ms. Williams is the daughter of the previous property owner (McMunns) of the subject properties. Gloria explained that her father had built the shop to support logging done in the Dayton, Washington area and used the shop to repair equipment. Gloria stated that her family had attempted several different businesses including a sawmill on the property. She concluded that many of the businesses had not operated on the properties for years. Ms. Williams subsequently followed up her phone call with comments via email, Exhibit # 10.

26. BACKGROUND, PROPOSAL, DISCUSSION: Below is information provided by the applicants' representative, Leslie Ann Hauer (Exhibit #4) followed by responses from County Planning.

BACKGROUND:

Applicants' Background Information:

"The County Planning Commission issued a decision for LUD-012-05, on October 28, 2005, confirming that existing uses on Tax Lots 1901, 1903 and 1904 were established prior to adoption of applicable zoning and therefore were verified as non-conforming uses. Section 13 "Verification...", subsection D, explains that the evidence provided in the application led to the conclusion that

...the contractor storage and scrap/salvage yard uses existed on Tax Lot #1904, 1901 and 1903 for the ten year period leading up to June 29, 2001. Therefore a rebuttable presumption that Tax Lot #1904, 1901 and 1903 constitute a legal non-conforming use appears relevant.

The 2005 decision did not identify the uses on the site that would have been permitted uses under current code and which uses were non-conforming under current code. Tax Lot 1904 is zoned Rural Retail/Service Commercial (RRSC). Vehicle repair and machine shop are permitted uses in the RRSC Zone (152.252(B) (3) & (4)); a welding shop as a stand-alone use would be allowed as a conditional use (152.253(I)) whereas here it is a use accessory to other uses. Tax Lots 1901 and 1903 are zoned Exclusive Farm Use (EFU). None of the existing uses currently on Tax Lots 1901 and 1903 would be permitted in the EFU Zone under current code."

Planning Response:

The 2005 Humbert application resulted from a code violation for the accumulation of solid waste. In order to resolve the solid waste violation Sam Humbert made application to the County Planning Department for verification of non-conforming use. The 2005 Humbert request consisted of the following uses or operations:

“ . . . wrecking yard, machine shop, welding shop, logging operation base, heavy equipment operation base, heavy equipment repair shop, truck repair shop, oxy/acetylene sales, iron works, use[d] parts sales and auto body shop.”

The 2005 staff report and Findings found two of these operations, the heavy equipment operation base (contractor storage) and wrecking yard had expanded onto adjoining properties owned by the applicants. The Planning Commission approved “. . . the heavy equipment operations base

(contractor storage) and scrap yard/salvage yard . . .” uses believed to be continuously operating on the properties. These two uses were also stipulated in Condition A. (See Exhibit #5)

The 2005 decision appears to have been based on limited evidence primarily aerial photos and letters signed by persons from the area that remembered various businesses operating on the McMunn properties. In the current application, the applicants again include copies of the letters presented in 2005. The signatures were placed on the 2005 support letters alongside the list of uses (businesses) operated by the previous property owner John McMunn. (See Exhibit#6.)

Uses lawfully established on a property and *continuously operating* prior to the adoption of applicable zoning ordinances may continue as a non-conforming use until the use is discontinued as prescribed by ordinance. If the non-conforming use is discontinued for a period in excess of one year then the use of the property must conform to the current zoning code². Properties that once had multiple operating non-conforming uses may over time discontinue one, several, or all, of the non-conforming uses and once this happens the use of the property must then conform to the current zoning code.

Staff requested that the Humberts list the specific uses they propose to continue and to identify the parcels for the continued use.

Applicants' Background Information:

“Mr. and Mrs. Humbert wish to sell the property and business, however have had questions arise from potential purchasers as to what uses are allowed and which uses could continue on the property Tax Lots 1901, 1903, and 1904. The 2005 decision is not a model of clarity in this regard, and that is why the current request is presented to the Planning Commission.”

Planning Response:

Planning staff has met with Mr. Humbert and with, at one time, potential purchasers, Tom and Andy Shaw. Also, there has been email correspondence (Exhibit #9) between staff and the Shaws about the Humbert properties. During the meeting with the Shaws, they expressed concern about using the EFU zoned parcels (Tax Lots 1901 and 1903) in association with a potential commercial truck repair business on the RRSC zoned parcel, Tax Lot 1904. The Shaws concern appeared to center on whether a secure storage area for truck parking could be permitted on the Humberts' EFU zoned parcels and additionally whether a future commercial business opportunity could allow secure storage for other storage needs (i.e., RVs, other storage goods, etc.) on the EFU parcels. Staff responded the use of the EFU zoned parcels as a commercial storage business was not a use that could be permitted. There was further discussion about pursuing a limited use rezone of the EFU zoned parcels.

² UCDC Section 152.593: “When a nonconforming use of a structure or property is discontinued for a period in excess of one year, the structure or property shall not thereafter be used except in conformance with the zone in which it is located.”

PROPOSAL:

Applicants' Proposal Information:

"Affirm that the uses listed in the Table: "Permissible Uses on Tax Lots 1901, 1903, 1904" are allowable on each Tax Lot as specified, permitted under current code or approved by LUD-012-05 as non-conforming uses."

Planning Response:

The applicants' representative evaluated some of the 2005 requested uses (i.e., vehicle³ repair shop, machine shop and welding shop) and provided an opinion on whether the use was a permitted use in a RRSC or EFU zone.

Planning offers the following:

- *Wrecking yard* – not permitted in RRSC or EFU, (permitted in Heavy Industrial),
- *Machine shop* – not permitted in RRSC or EFU, (permitted in Light Industrial),
- *Welding shop* – permitted in RRSC through CUP approval, not permitted in EFU,
- *Logging Operations Base* – not permitted in RRSC, limitations in EFU, (permitted in Industrial),
- *Heavy equipment operation base* – not permitted in RRSC or EFU, (permitted in Industrial),
- *Heavy equipment repair shop* – not listed as permitted in RRSC or EFU, (possible CUP for use similar to truck service and maintenance),
- *Truck shop repair*⁴ – not permitted in RRSC or EFU, (possible CUP in RRSC for use similar to automobile repair shop),
- *Oxy/acetylene sales* – permitted in RRSC, not permitted in EFU,
- *Iron works* – not permitted unless qualified as "major manufacturing" in the Heavy Industrial Zone,
- *Used parts sales* – permitted in RRSC, not permitted in EFU,
- *Auto body shop* – permitted in RRSC, not permitted in EFU.

In a commercial and industrial zone, the 1972 zoning code permitted ". . . each principle structure or use shall be on an individual tax lot." Likewise, the 1983 development code states a similar requirement for uses permitted in a commercial and industrial zone ". . . each principle structure or use shall be on an individual parcel or lot before a zoning permit will be issued."

Some of the uses identified above (i.e., welding shop, oxy/acetylene sales, used parts sales and auto body shop) could receive permit approval in a commercial zone as a principle use as long as each principle use was on an individual parcel or, if the business included a variety of similar

³ The RRSC zoning code identifies an "automobile, truck or motorcycle repair shop or parts store" permitted through approval of a design review/zoning permit.

⁴ The LI zoning code identifies "truck sales, service, storage and maintenance" permitted through approval of a design review/zoning permit.

uses. Some uses identified above may operate as accessory uses⁵ or what is sometimes termed “in support of” uses. It also appears from the applicants’ information, “... here it is a use accessory to other uses” that the Humberts recognize that the welding shop is not operated as a principle business but would support another operation or business on the properties, possibly the applicants’ salvage and scrap business, or in making repairs to the Humberts’ equipment.

The applicants table, “Permissible Uses on Tax Lots 1901, 1903 & 1904”, includes a column labeled, “Uses Historically and Currently Occurring”. This column includes uses identified by the applicants as permitted uses and includes the fifth listed item as follows:

“Sales of the following items:

Welding supplies, oxygen, acetylene, helium, argon, and other mixed gasses.”

These products likely were retailed by the Humberts prior to the time when Oxarc and Norco provided this service to area businesses; however, in 2005 the Planning Commission did not include approval of a commercial retail welding supply business. In staff’s opinion welding performed as an accessory use to the Humberts’ permitted use on the properties, to cut up and break down salvage materials and/or to making repairs to the applicants’ trucks or heavy equipment may continue as an accessory use to the applicants’ approved permitted use.

Additionally, the fifth item in the table includes the following Sales items:

“plastic and galvanized culvert, new and used; any form of iron or metal, new and used; new and used parts for truck repair from bumper to bumper; batteries from lawnmower size to 12-volt batteries of various sizes.”

The Humberts operate a scrap/salvage yard, which was clearly permitted in 2005 in the County Planning Commission Findings. Salvage materials could include plastics, metals, and used parts that would be recovered and resold. Sales of new materials whether plastic, metal, equipment parts or batteries were not specifically addressed in 2005 by the Planning Commission as part of the permitted “heavy equipment operations base (contractor storage) and scrap yard/salvage yard”.

DISCUSSION:

Applicants’ Discussion Information:

“The Non-Conforming Use approval from 2005 is not at issue, rather the question to be resolved is what specific uses are authorized by LUD-012-05 Condition A and which uses are permitted under current code. This question arises because language in Condition of Approval A is not clear and uses terms not defined in the Code:

⁵ UCDC 152.003: **ACCESSORY USE** or **STRUCTURE OR DWELLING**. A use, structure, or dwelling which is subordinate to and serves a principal building or principal use and is subordinate in area, extent, or purpose to the principal building or principal use served, and contributes to the comfort, convenience, or necessity of occupants of the principal building or principal use, and is located on the same lot as the principal building or principal use.

A. The heavy equipment operations base (contractor storage) and scrap yard/salvage yard [shall] be confined to the three legal non-conforming parcels (Tax Lot #1901, 1903 and 1904) that existed prior to the aerial photos taken in 1977 and have been in continuous operation for ten years prior to June 29, 2001."

Planning Response:

The Land Use Decision made in 2005 by the Planning Commission *is not* once again being decided. The 2005 Land Use Decision Condition A allows the Humberts to operate a "heavy equipment operations base (contractor storage) and scrap yard/salvage yard." The applicants request interpretation.

Applicants' Discussion Information:

"The terms used in Condition A - heavy equipment operations base (contractor storage) and scrap yard/salvage yard are not defined in the Umatilla County Development Code. However, the intent of the terms as used in the staff report that was adopted as the Planning Commission's findings appears to be broadly inclusive of the uses as described in the application. These uses are explained in the "Findings and Conclusion", Section 3 Request/Background which describes the uses of the three tax lots as established on the site prior to 1974 when Humberts acquired the property, including:

...a wrecking yard, machine shop, welding shop, logging operation base, heavy equipment operation base, heavy equipment repair shop, truck repair shop, oxy/acetylene sales, iron works, use parts sales and an auto body shop."

Planning Response:

The applicant is correct in that the County Development Code does not define "heavy equipment operations base (contractor storage)" or "scrap yard/salvage yard". However, we can turn to common dictionary definitions and encyclopedia descriptions for some terms.

From the Wikipedia online encyclopedia *heavy equipment* is referred to as "heavy-duty vehicles, specially designed for executing construction tasks, most frequently ones involving earthwork, operations. They are also known as, heavy machines, heavy trucks, construction equipment, engineering equipment, heavy vehicles, or heavy hydraulics."

Merriam-Webster free online dictionary defines the words *operation*, *base* and *storage* in the following ways. *Operation* includes: 1) a process in which a doctor cuts into someone's body in order to repair or remove a damaged or diseased part, 2) usually small business or organization, and 3) an activity of a business or organization. *Base* includes: 1) the bottom or lowest part of something; 2) the part on which something rests or is supported; 3) something (such as a group of people or things) that provides support for a place, business, etc.; and 4) a main ingredient to which other things are added to make something. *Storage* includes: 1) space where you put things when they are not being used; 2) the state of being kept in a place when not being used; 3) the state of being stored somewhere; 4) the act of putting something that is not being used in a place where it is available, where it can be kept safely, etc., and 5) the act of storing something.

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It may be that the 2005 Planning Commission believed the Humberts operated a Heavy Equipment Operations Base business that provided heavy equipment services to others while based on the property. Repairs and maintenance of the business equipment could be expected to occur in the existing shop located on the property (Tax Lot 1904). Additionally, *contractor storage* could be defined as the placement, or storing, of contractor's materials not currently in use.

Webster online dictionary defines the words *scrap* and *salvage* in the following ways. *Scrap* includes: 1) a small piece of something that is left over after the rest has been used; 2) the act of fighting; 3) make into scrap or refuse; and 4) disposed of as useless. *Salvage* includes: 1) property or good saved from damage or destruction; 2) the act of saving goods or property that were in danger of damage or destruction; 3) the act of rescuing a ship or its crew or its cargo from a shipwreck or a fire; 4) save from ruin, destruction, or harm; and 5) collect discarded or refused material.

A *scrapyard/salvage yard* appears to be the saving of left overs (scrap) and the collection of discarded or refused materials in a yard area on the properties. The purpose of salvaging materials likely would not simply be to store the scrap and salvaged items on the Humbert properties but to resale scrap and salvaged items.

Lastly, the County Development Code likewise does not specifically define the other uses listed by the applicants: *a wrecking yard, machine shop, welding shop, logging operation base, heavy equipment operation base, heavy equipment repair shop, truck repair shop, oxy/acetylene sales, iron works, use[d] parts sales or auto body shop.*

Applicants' Discussion Information:

"The building on Tax Lot 1904 was and continues to be primarily used for the repair of all types of vehicles and machine shop-types of activities while storage and salvage of vehicles and equipment used in construction, logging, and farming occurs primarily on Lots 1901 and 1903.

The vehicle and equipment repair, along with related uses identified below, are permitted on Tax Lot 1904 and in the existing building on Tax Lot 1904. To the extent the scrap/salvage yard business occurs on Tax Lot 1904, it would be allowed by the non-conforming use approval. Storage of equipment and vehicles for scrap and salvage, and disassembly of equipment and vehicles, occurs primarily on Tax Lots 1901 and 1903. Nothing in Condition A for LUD-012-05 limits uses on Tax Lot 1904 that are otherwise permitted in the RRSC Zone, but rather the decision allows additional uses to the extent such uses may have become non-conforming."

Planning Response:

Staff concurs that the shop building located on Tax Lot 1904 may continue to be used for repairs to the applicants' trucks and equipment and to break up scrap/salvage materials. The 2005 Planning Commission's Condition A did not permit a Commercial Truck Repair business as a non-conforming use. In fact, the Planning Department previously shared with both Mr. Humbert and to an interested property buyer that a Commercial Truck Repair business could possibly be permitted on the RRSC zoned Tax Lot 1904 through approval of a conditional use permit. (An approved permit to operate a Commercial Truck Repair business would allow repairs to large

trucks and heavy equipment used in construction, logging, and farming and accessory uses to the commercial repair business such as welding and machining.) Therefore, the 2005 Planning Commission decision was correct in not approving a repair business as a non-conforming use since a repair business would be a use that could be permitted on a RRSC zoned parcel.

Applicants' Discussion Information:

"Mr. and Mrs. Humbert believe that the decision was written in broad terms to allow continuation of the established uses on the property, as enumerated in Section 3, quoted above, as well as uses that could be permitted in the RRSC Zone. These uses have continuously occurred on the site since at least 1974, when Humberts acquired the property."

Planning Response:

Although the Humberts' 2005 Land Use Application was approved, not every specific use requested was approved. The 2005 Planning Commission approved only those non-conforming uses stipulated in Condition A.

Applicants' Table Information:

"The following Table lists uses that Mr. and Mrs. Humbert believe have been approved or which are allowed as permitted uses:

Permissible Uses on Tax Lots 1901, 1903, & 1904

Tax Lot	Uses Historically and Currently Occurring	Permitted (P) or NC Use
TL 1904 (RRSC)	Repair and servicing of vehicles, including vehicles that might be considered "heavy equipment" and used for construction, logging, and farm equipment, including trucks commonly used in these activities.	P
	Vehicle and equipment repair, including repair of radiators, motor overhaul, transmissions, build hydraulic hoses and cylinders, frame repair and replacement, rear end repair, welding, body work, painting, and so on.	P
	Construction, deconstruction and reconstruction of vehicles (e.g. lengthen or shorten truck frames, convert single axle to multi-axle vehicles, repower trucks from 200hp to 650hp, change gear ratios, build truck beds, drop boxes, trailers, lowboys, conveyors, irrigation conveyors, and related equipment, etc.)	NC
	Department of Transportation annual vehicle inspections	P
	Sales of the following items: -Welding supplies, oxygen, acetylene, helium, argon, and other mixed gasses; -Plastic and galvanized culvert, new and used; Any form of iron or metal, new and used; -New and used parts for truck repair from bumper to bumper; -Batteries from lawnmower size to 12-volt batteries of various sizes	P (Welding items, possibly CUP)

	Storing parts from vehicles for reuse and resale (scrap/salvage yard); retrieving parts from storage for reuse and resale	NC
TL 1901 (EFU)	Storing parts from vehicles for reuse and resale (scrap/salvage yard); dismantling vehicles and retrieving parts from storage for reuse and resale	NC
TL 1903 (EFU)	Storing parts from vehicles for reuse and resale (scrap/salvage yard); dismantling vehicles and retrieving parts from storage for reuse and resale”	NC

Planning Response:

“Vehicle repair” is used by the Humberts’ representative to describe a use that may be permitted on a RRSC zoned property. The word “vehicle” is an inclusive word for all manner of transportation equipment and is not the term used by the county under uses permitted with a zoning permit in the RRSC Zone. The planning department has historically issued permits for automobile, (pickup) trucks and motorcycle repair shops in the RRSC zone and issued permits for large trucks and heavy equipment repair shops in the Light Industrial zone.

Uses in the RRSC permit, “automobile, truck or motorcycle repair shop . . .” although, there could be debate about the word ‘truck’ and how the word should be inclusive of large semi/diesel trucks. The County consistently has interpreted and permitted large commercial truck repair businesses in rural Umatilla County (e.g., Medelez Trucking, Freightliner and Wentland Diesel) as “Truck sales, service, storage and maintenance” on lands zoned Light Industrial. However, there is an opportunity to receive approval for a permit to operate a large commercial truck repair business by applying for a conditional use permit on the land zoned RRSC under Code Section 152.253 (J) “Other uses similar . . .”

27. CONCLUSION:

Applicants’ Conclusion:

Mr. and Mrs. Humbert respectfully request that the Umatilla County Planning Commission confirm that this interpretation is consistent with the uses allowed in the RRSC Zone and the Non-Conforming Use decision for LUD-012-05.

Planning Conclusion:

The applicants are permitted to operate the uses on the Humbert properties as approved in 2005. Other allowable uses that may be permitted on the Humbert properties would require the Humberts and/or potential purchasers to make application for the use and meet County and State standards. Accessory uses in support of permitted uses on the properties may continue to operate as subordinate uses to the permitted principle uses approved on the properties.

DECISION OPTIONS:

Staff Recommendation

1. The Planning Commission confirms Condition A of the 2005 decision as permitting two principle uses as non-conforming uses, “heavy equipment operations base (contractor storage) and scrap yard/salvage yard” on the Humbert properties identified as Tax Lots

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1901, 1903 and 1904, Map 6N 35 25C. The 2005 approved non-conforming uses and this decision, include confirmation of the following uses:

- the storage of materials used in the operation of the heavy equipment operations base (contractor storage) business, and materials to be salvaged as part of the scrap yard/salvage yard approval on Tax Lots 1904, 1903 and 1901;
 - repairs to the Humberts' equipment associated with the "heavy equipment operations base (contractor storage) and scrap yard/salvage yard" on Tax Lot 1904; and
 - accessory uses (i.e., welding shop and machine shop) in support of repairs to the Humberts' equipment associated with the "heavy equipment operations base (contractor storage) and scrap yard/salvage yard" on Tax Lot 1904;
 - sale of recovered scrap and salvage materials, allowed as an accessory use to the permitted use of operating a scrap yard/salvage yard on Tax Lots 1904, 1903 and 1901.
2. Other permitted uses may be approved in accordance with the current property zoning and the Umatilla County Development Ordinance.
 3. The Planning Commission decision shall not limit action by Code Enforcement in regulating the County Land Use and Solid Waste Ordinances on the subject properties.

Modification of Staff Recommendation

4. The Planning Commission confirms Condition A of the 2005 decision as permitting two principle uses as non-conforming uses, "heavy equipment operations base (contractor storage) and scrap yard/salvage yard" on the Humbert properties identified as Tax Lots 1901, 1903 and 1904, Map 6N 35 25C. The 2005 approved non-conforming uses and this decision, include confirmation of the following uses:

•

Other

5. The Planning Commission . . .

UMATILLA COUNTY PLANNING COMMISSION

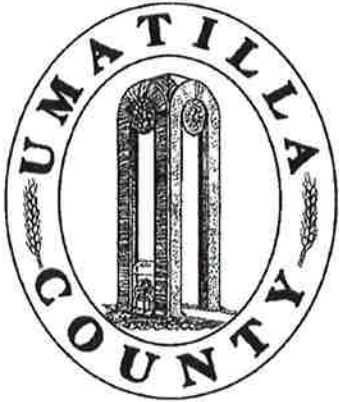
Dated _____ day of _____, 20____

Randy Randall, *Planning Commission Chair*

Mailed _____ day of _____, 20____

LWD-174-14 RECEIVED

AUG 13 2014



**Umatilla County
Department of Land
Use Planning**

**LAND USE
REQUEST
APPLICATION**

Return Application
Materials To:

**Department of Land
Use Planning**
216 SE 4th ST, Room 104
Pendleton, OR 97801

Voice: (541) 278-6252
Fax: (541) 278-5480
www.umatillacounty.net

Revision Date: November 7, 2012
Please obtain the most current version of
this application and other supplemental
applications before submitting.

**LAND USE REQUEST APPLICATION
REVIEW PROCESS** UMATILLA COUNTY
PLANNING DEPARTMENT

1. Pre-Application Meeting:

The applicant(s) will meet with the Planning Department staff to review the proposed development/request. Applicable information will be discussed in relation to the proposal. The applicant(s) will then submit all applicable materials to the Planning Department at their convenience.

2. Determination of Completeness

The Planning Department staff will review applicable regulations in regards to the type of application. Once the application is determined to be complete the 120 or 150 day clock will begin, which is the maximum amount of time the County has, by law, to process the application.

3. Administrative Review

Planning staff reviews applications that fall within the administrative review process. A public notice is sent to the surrounding property owners and affected public agencies. The public notice includes a description of the request and the analysis (preliminary findings) of how the request conforms to the standards set forth in the Umatilla County Development Code. The Planning Director approves administrative decisions. Applications processed through administrative review may be directed to a public hearing at the discretion of the Planning Director, or by the request of a notified property owner or public agency. Decisions made at a public hearing are made by the Planning Commission.

4. Consideration by Planning Commission

Public notices are sent to the adjacent property owners for comments of an application that will be heard before the County Planning Commission. The application will then go before the Umatilla County Planning Commission in an Open Record Public Hearing. Public comment is received and a decision is rendered on the application or a recommendation is made to the Board of Commissioners depending upon the type of application being processed.

5. Consideration by the Board of Commissioners

The Board of Commissioners hears legislative type of applications (amendments) or appeals. Public hearings are held with testimony being taken for the application or appeal. The Board of Commissioners makes a final decision.

6. Provision for Appeals

An appeal is provided for if the applicant/person with standing desires to challenge a decision of the decision-making body (Planning Director, Planning Commission or Board of Commissioners). After a decision is made by any of the decision making bodies the appeal must be filed within 15 days of the decision. Failure to appeal the decision during that timeframe specified precludes any further appeal on the matter.

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Contact Information for Agencies and Offices

State Offices

Department of Environmental Quality, DEQ
Pendleton Office, On-Site Program, 541-276-4063

Department of Fish and Wildlife, ODFW
Pendleton Office, 541-276-2344

Department of Forestry, ODF
Pendleton Office, 541-276-3491

**Department of Geology and Mineral Industries,
DOGAMI, Albany office, 541-967-2039**

Division of State Lands, DSL
Bend Office, 541-388-6112

Office of Energy
Salem Office, 503-373-1034

Oregon Department of Transportation, ODOT
Pendleton Office, 541-276-1241
La Grande Office, 541-963-1574

**Oregon Water Resource Department, OWRD
(Watermaster) Pendleton office, 541-278-5456**

State Building Codes
Pendleton Office, 541-276-7814

State Historic Preservation Office, SHPO
Salem Office, 503-378-4068

County Offices

County Assessor, 541-278-6219

County Surveyor, 541-278-5460

County Public Works, 541-278-5424

County Records, 541-278-6236

County Tax Office, 541-278-6213

Fire Districts/Departments

East Umatilla County Fire District
Don Jackson, 541-566-2311 or 541-566-3210

Echo Fire District
Merle Gehrke, 541-376-8118 or 541-376-8550

Helix Fire District
Michelle Tolley, 541-457-2911

Hermiston Fire & Emergency Services
Pat Hart, 541-567-8822

Meacham Volunteer Fire Department
Rollin Reynolds, 541-983-2588

Milton-Freewater Rural Fire Department
Rick Saager, 541-938-7146 or 541-938-7222

**Pendleton Fire District; Lower McKay, McKay Creek,
Rieth & Riverside, Tyler Nokes, Fire Chief**
541-276-1442

Pilot Rock Fire District
Brian Hemphill, 541-443-5121

Stanfield Rural Fire District
Jim Whelan, 541-449-1123

Umatilla Rural Fire District
Mike Roxbury, 541-922-3718

Irrigation Districts

Hermiston Irrigation District
Chuck Wilcox, 541-567-3024

**Hudson Bay Improvement District (also serving the
Walla Walla River**
Jon Brough, 541-520-2856

Stanfield Irrigation District
Ray Kopacz, 541-449-3272

West Extension Irrigation
Bev Bridgewater, 541-922-3814

Westland Irrigation District
Mike Wick, 541-667-2030

- For Office Use Only -

Application Fee (non-refundable):
The acceptance of the fee does not mean the application is determined to be complete at this time. \$

Assigned Application #: LUD-174-14

Umatilla County Department of Land Use Planning Land Use Request Application

This application must be submitted to the Umatilla County Department of Land Use Planning, 216 SE 4th ST, Pendleton, OR 97801, (541) 278-6252, and must be accompanied by a non-refundable application fee. Acceptance of the application and fee does not guarantee approval or a Determination of Completeness. **PLEASE COMPLETE THIS APPLICATION PRINTING CLEARLY WITH A BLACK INK PEN**

Section 1: Type of Application(s) to Submit

Complete the applicable Supplemental Application that corresponds with the application you are submitting.

Amendment: Comprehensive Plan Text/Map, Zoning Text/Map

Conditional Use (*briefly describe*) _____

Land Division Type I, Type II, Type III, Type IV

Land Use Decision Farm Dwelling, Non-Farm Dwelling, Lot of Record Dwelling
(*OTHER LUD, briefly describe*) Clarification Non-Conforming Use Approval

Pre-Application Dwellings on resource land (*specify*) _____

Variance Lot Size, Setbacks, Other (*specify*) _____

Section 2: Contact Information

Name of Applicant: Samuel & Rosella Humbert

Address: 54841 Hwy 332

City, State, Zip: Milton-Freewater, OR 97862

Telephone Number & Email Address: 541-938-7514

The APPLICANT is the ... Legal Owner, Contract Purchaser, Agent, Realtor

Name of Current Property Owner(s): Sam E Humbert (Trs) & Rosella I Humbert (Trs)
If Property Owner is not the applicant.

Address: 53293 Triangle Road

City, State, Zip: Milton-Freewater, OR 97862

Telephone Number: 541-938-7803

Section 3: Property Information

Complete for all land use request applications.

1. Location of Property (Provide directions you would give someone to get to the property):
 coming from Pendleton on Hwy 11 turn Left on Hwy 332 go about 1/4 mile we are on your right. .

2. Account Number(s) of Property:
 Account # ^{EFU 1903} 112128 & ^{RRSC 1904} 112134
 Account # ³³⁰⁰ ~~112169~~ ^{EFU} 112120 = TL 1901

3. Map Number(s) of Property: Township 6N Range 35 Section 25C Tax Lot ^{1901,03,04} _____
 Township _____ Range _____ Section _____ Tax Lot _____

Use separate sheet of paper for ENTIRE Legal Description and mark it "Exhibit A".

4. Has the Property or dwelling received a Rural Address? If so, what is it?
 Yes 54841 Hwy 332 Milton-Freewater, OR
 No

5. Current size of the Property:
 Note: A "TRACT OF LAND" is contiguous property within the same ownership. A Tract is viewed differently at times in terms of land use.
 Acres 1901-1.25 Acres, 1903-1.25 Acres
 Acres 1904-2.50 Acres

6. Current Zoning Designation: There are some 22 zoning designations in Umatilla County.
 EFU Other Zone RRSC
 GF

7. Comprehensive Plan Designation: A Comprehensive Plan Designation is different than a Zoning Designation in that it distinguishes land that should be developed for various uses, where zoning actually specifies the uses. There can be multiple zoning designations within a Comprehensive Plan Designation.
 Agri-business North/South Agriculture
 Commercial Orchard District
 Grazing/Forest Rural Residential
 Industrial Special Agriculture
 Multi-Use West County Irrigation District

8. Buildings on the Property:
Main shop, various storage buildings

9. Current Use of the Property. If the use is farming, explain the types of crops grown.
Please see attached

10. Surrounding Uses of the Property. If the use is farming, explain the type of crops grown.
Cherry Orchard, Drive-In Movie Theatre, residential ?

(19)

11. Does the Property reside in a Floodplain?
If so, a Floodplain Development Permit will need to be completed prior to construction.

No, the Property is not in a floodplain.
 Yes, the Property is in a floodplain:

Zone _____

Community Number _____

Panel Number _____

12. If the Property is in a Floodplain then is it also located in a wetland as listed on the National Wetlands Inventory maps?

Yes, provide documentation.
 No, the Property is not in a wetlands

13. How is ACCESS provided to the Property? (i.e. provide name of road that directly serves the Property.) What type of surface does the roadway have?

Name of Road or Lane
Hwy 332-Paved/ Poverty Lane-gravel

Paved, Gravel, Dirt

14. Will the Property need an Access Permit onto a County Road or State Highway? If so contact the County Public Works Department, 541-278-5424, or ODOT, 541-276-1241.

Yes, if so please contact the proper authority and provide that documentation
 No, one already exists (provide a copy)

15. EASEMENTS: Are there any easements on the Property that provide the MAIN ACCESS for the Property OR adjacent properties? Are there any other easements on the property? Attach easement documentation.

Attach easement documentation:

Access easements exist
 Utility line easements exist
 Irrigation easements exist
 Other easements exist: _____
 No, other easements exist.

16. Which Rural Fire District/Department covers your Property with fire protection?

<p><i>Fire Services:</i></p> <input type="checkbox"/> East Umatilla <input type="checkbox"/> Echo Rural <input type="checkbox"/> Helix Rural <input type="checkbox"/> Hermiston Rural <input type="checkbox"/> Pendleton FD <input type="checkbox"/> Pilot Rock FD <input type="checkbox"/> Stanfield Rural <input type="checkbox"/> Umatilla Rural	<p><i>Private Companies:</i></p> <input type="checkbox"/> Meacham <input checked="" type="checkbox"/> Milton-Freewater (subscriber) <input type="checkbox"/> Tribal <input type="checkbox"/> Not in a RFD <input type="checkbox"/> Other, _____
--	---

17. Is the Property within an Irrigation District? If the property is served by an Irrigation District, a confirmation letter from that office discussing any concerns of the proposed development must be submitted with this application.

<p><i>Irrigation District:</i></p> <input type="checkbox"/> Hermiston <input type="checkbox"/> Stanfield <input type="checkbox"/> West Extension <input type="checkbox"/> Westland	<input type="checkbox"/> Hudson Bay or Walla Walla River Irrigation <input type="checkbox"/> Not in an ID <input type="checkbox"/> Other, _____
---	---

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18. Describe the soils on the Property by listing the map name and land capability. Visit <http://websoilsurvey.nrcs.usda.gov> or contact NRCS at (541) 278-8049.

Map Unit	Description	Class

19. What type of water use(s) exist on the Property? If there are none currently, will there be water uses developed in the future?

- No current water uses exist
 Water Uses to be developed:
 Yes, there are water uses
 Domestic Well
 Irrigation Well
 Stock Well
 Other: _____

20. Are there Water Rights on the Property? If there are Water Rights, the water permit, certificate and/or other documentation from the Oregon Water Resources Department shall be included with this application.

- No current water rights exist
 Will apply for Water Rights
 Yes, there are water rights, please provide documentation (permit #, etc.)
 Surface Water Right, # _____
 Ground Water Right, # _____

21. What are the water needs of the proposed development? Provide an explanation that shows how the determination was obtained that shows daily usage of water for the development.

- Expected Water Usage:*
 Exempt Domestic Well (<15,000 gal daily)
 Exempt Commercial Well (<5,000 gal daily)
 Water Right required, estimated number of gallons to be used daily: _____ gallons
 No water is necessary for the development

22. What is the source of your water supply for the proposed development? Please explain your response on a separate sheet of paper.

- Water Source:*
 Surface Water, explanation attached
 Alluvial Groundwater, explanation attached
 Basalt Groundwater, explanation attached
 No water is necessary for the development

23. Who is the provider of the utilities for the Property?

Water well, or _____

Sewer septic, or _____

Telephone _____

Electrical _____

Garbage Disposal _____

24. Provide a description of your proposal (*attach a description if necessary*):

see attached

Section 4: Required Application Materials

25. These materials are to be submitted with the application: The proceeding page is to be used as a base for the site plan. This drawing DOES NOT take the place of any maps required to be submitted by a Licensed Surveyor. This site plan will show what is or will be on the property. Additional material may be requested.

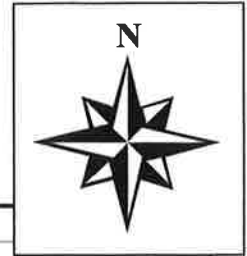
<input checked="" type="checkbox"/>	Materials to be submitted for ALL types of Applications:						
<input type="checkbox"/>	a) Completed Application form.						
<input type="checkbox"/>	b) Applicable Application fees.						
<input type="checkbox"/>	c) Site Plan Marked Exhibit B (see next page) to include:						
<input type="checkbox"/>	• Scale of drawing						
<input type="checkbox"/>	• Site area showing <u>property boundaries</u> and dimensions						
<input type="checkbox"/>	• Proposed and existing <u>structures</u> with dimensions to nearest Property lines						
<input type="checkbox"/>	• Location of existing <u>wells</u>						
<input type="checkbox"/>	• Location of existing <u>septic systems</u> (i.e. tanks, drain fields)						
<input type="checkbox"/>	• Widths and names of <u>roads</u> adjacent to the site as well as existing roads, which provide direct access to the property.						
<input type="checkbox"/>	• Existing <u>access points</u> (driveways, lanes, etc.)						
<input type="checkbox"/>	• <u>Easements</u> and rights-of-ways						
<input type="checkbox"/>	• Existing <u>utility lines</u> (above and below ground)						
<input type="checkbox"/>	• Approximate location of any unusual <u>topographical</u> features.						
<input type="checkbox"/>	• Major <u>geographic</u> features						
<input type="checkbox"/>	• Location of all creeks, streams, ponds, springs and other drainage ways						
<input type="checkbox"/>	d) <u>VICINITY MAP</u> – Assessor’s map of the Property.						
<input type="checkbox"/>	e) <u>Property ASSESSOR’S REPORT</u> showing property details.						
<input type="checkbox"/>	f) The <u>DEED(S)</u> of the Property in question.						
<input type="checkbox"/>	g) <u>Property TAX LOT CARD(S)</u> and description of property.						
<input type="checkbox"/>	h) OVERLAY MAP showing potential re-division of the parcels (if the parcels are large enough to be re-divided). Within the Hermiston Urban Growth Boundary, a formal “Shadow Plat” may be required.						
<input type="checkbox"/>	i) SUPPLEMENTAL APPLICATION for the land use request will also be required to be submitted with this basic application form. Submit a Supplemental Application if applying for any of the following: <table style="margin-left: 40px; width: 100%;"> <tr> <td>- Amendment to Comprehensive Plan/Map or Zoning Text/Map</td> <td>- Land Division</td> </tr> <tr> <td>- Conditional Use</td> <td>- Land Use Decision</td> </tr> <tr> <td></td> <td>- Variance</td> </tr> </table>	- Amendment to Comprehensive Plan/Map or Zoning Text/Map	- Land Division	- Conditional Use	- Land Use Decision		- Variance
- Amendment to Comprehensive Plan/Map or Zoning Text/Map	- Land Division						
- Conditional Use	- Land Use Decision						
	- Variance						



**Contact County
Assessor**

Exhibit B, "Site Plan"

Please include the details listed under item (c)
found in Section 4 (on preceding page)

A large rectangular area filled with a fine grid of lines, intended for drawing a site plan. The grid is approximately 30 units wide by 40 units high.

Section 5: Certification

Original signatures only, photocopies, faxes, etc. will not be accepted.

APPLICANT: I, the undersigned, swear under penalty of perjury that the above responses are made truthfully and to the best of my knowledge.

Sam Humbert
Signature of Applicant

8/11/2014
Date

SAM & Rosella Humbert
Printed Name of Applicant

PROPERTY OWNER(S): ALL property owners to this land use request are to sign, date and print their names verifying that the applicant is authorized to submit the specified land use request. If there are multiple parcels that are part of this land use request, please indicate which parcel you own. This page can be copied if there are more property owners than this space allows. Attach additional page if necessary.

Legal Owner(s) SAMUEL E HUMBERT (TRS)

Mailing Address 53293 TRIANGLE RD City, State, Zip MILTON-FREEWATER, OR 97862

Parcel Map # 6N3525C001904 & 6N3525C001903

Samuel Humbert

Signature of Legal Owner

Signature of Legal Owner

8/11/2014
Date

Date

* * * * *

Legal Owner(s) ROSSELLA J HUMBERT (TRS)

Mailing Address 53293 TRIANGLE RD City, State, Zip MILTON-FREEWATER, OR 97862

Parcel Map # 6N3525C001901

Rosella J Humbert

Signature of Legal Owner

Signature of Legal Owner

8/11/2014
Date

Date

ADDITIONAL PERSON(S) TO SEND NOTICE

Is there anyone else besides the property owner and adjacent property owners who would like to receive notice of this application during its' review period and notice of decision? (Realtor, Prospective Buyer, Attorney, etc.) Provide name and mailing address:

Name: CARRIE A. RICHTER Address: GARVEY SCHUBERT BARER
11TH FLOOR 121 SW MORRISON STREET
PORTLAND, OR 97204-3141

LESLIE HAUER

6100 COLLINS ROAD
WEST RICHLAND, WA 99353

Umatilla County Department of Land Use Planning, Land Use Request Application, page 9

Revision Date: November 7, 2012, File Location: H:\shared\Forms_Master\Land_Use_Application.doc

(24)

1000
6.75 Ac.

4.59 Ac.

330.81'

330.81'

331.03'

331.03'

331.03'

657.43'
657.47'

656.85'

530'

657.42'

1902
5.02 Ac.

2300
3.80 Ac.

2400
1.00 Ac.

2700
8.10 Ac.

1903
1.25 Ac.

1901
1.25 Ac.

2200
1.98 Ac.

2202
0.65 Ac.

2100
1.99 Ac.

2803
1.18 Ac.

2801
7.65 Ac.

1904
2.50 Ac.

2000
4.47 Ac.

RRSC

PARCEL 1

2804
1.01 Ac.

2000 - 10

PARCEL 2

2805
1.02 Ac.

PARCEL 3

COUNTY ROAD

(NO. 398 & 456)

See Map 6N 35 36B

STATE

MLR

P.C.S.

P.C.S.

4+33.96

30' EASEMENT

URBAN

N 89° 26' 18" W

200.00'

200.00'

178+20.63

100'

100'

197.00'

81.51'

200.00'

S 89° 26' 19" E

N 89° 08' E

25

Application for Clarification of Non-Conforming Use Approval

Applicant & Property Owner	Samuel and Rosella Humbert 54841 Hwy. 332 Milton-Freewater, OR 97862 Contact: Sam Humbert or Cindy Granger (541) 938-4188
Representative	Leslie Ann Hauer 6100 Collins Road West Richland, WA 99353 (509) 967-2074
Proposal	Clarification of Non-Conforming Use Approval
Location:	54841 Hwy.332, Milton-Freewater
Legal Description	Map 6N 35 25C, Tax Lots 1901, 1903 and 1904
Site Size	Tax Lot 1901 – 1.25 Acres Tax Lot 1903 – 1.25 Acres Tax Lot 1904 – 2.50 Acres
Zoning Designation	Tax Lot 1904: RRSC Tax Lots 1901 & 1904: EFU 3
Exhibits	1. Site Map 2. LUD-012-05 Planning Commission Decision

BACKGROUND

The County Planning Commission issued a decision for LUD-012-05, on October 28, 2005, confirming that existing uses on Tax Lots 1901, 1903 and 1904 were established prior to adoption of applicable zoning and therefore were verified as non-conforming uses. Section 13 "Verification...", subsection D, explains that the evidence provided in the application led to the conclusion that

...the contractor storage and scrap/salvage yard uses existed on Tax Lot #1904, 1901 and 1903 for the ten year period leading up to June 29, 2001. Therefore a rebuttable presumption that Tax Lot #1904, 1901 and 1903 constitute a legal non-conforming use appears relevant.

The 2005 decision did not identify the uses on the site that would have been permitted under current code and which uses were non-conforming under current code. Tax Lot 1904 is zoned Rural Retail/Service Commercial (RRSC). Vehicle repair and machine shop¹ are permitted uses in the RRSC Zone (152.252(B)(3) & (4)); a welding shop as a stand-alone use would be allowed as a conditional use (152.253(I)) whereas here it is a use accessory to other uses. Tax Lots 1901 and 1903 are zoned Exclusive Farm Use (EFU). None of the existing uses currently on Tax Lots 1901 and 1903 would be permitted in the EFU Zone under current code.

Mr. and Mrs. Humbert wish to sell the property and business, however have had questions arise from potential purchasers as to what uses are allowed and which uses could continue on the property -- Tax Lots 1901, 1903, and 1904. The 2005 decision is not a model of clarity in this regard, and that is why the current request is presented to the Planning Commission.

PROPOSAL

Affirm that the uses listed in the Table: "Permissible Uses on Tax Lots 1901, 1903, & 1904" are allowable on each Tax Lot as specified, permitted under current code or approved by LUD-012-05 as non-conforming uses.

¹ Neither of these terms -- "vehicle repair" or "machine shop" -- are defined in the Umatilla County Development Ordinance. Webster's II New Riverside University Dictionary defines "vehicle" as "A device, as a motor vehicle or a piece of mechanized equipment, for transporting passengers, goods, or apparatus..." (page 1279). A "machine shop" is defined as "A workshop where power tools are used for making, finishing, or repairing machines or machine parts." (page 712)

DISCUSSION

The Non-Conforming Use approval from 2005 is not at issue, rather the question to be resolved is what specific uses are authorized by LUD-012-05 Condition A and which uses are permitted under current code. This question arises because language in Condition of Approval A is not clear and uses terms not defined in the Code:

A. The heavy equipment operations base (contractor storage) and scrap yard/salvage yard [shall] be confined to the three legal non-conforming parcels (Tax Lot #1901, 1903 and 1904) that existed prior to the aerial photos taken in 1977 and have been in continuous operation for ten years prior to June 29, 2001.

The terms used in Condition A -- heavy equipment operations base (contractor storage) and scrap yard/salvage yard -- are not defined in the Umatilla County Development Code. However, the intent of the terms as used in the staff report that was adopted as the Planning Commission's findings appears to be broadly inclusive of the uses as described in the application. These uses are explained in the "Findings and Conclusion", Section 3 Request/Background which describes the uses of the three tax lots as established on the site prior to 1974 when Humberts acquired the property, including:

...a wrecking yard, machine shop, welding shop, logging operation base, heavy equipment operation base, heavy equipment repair shop, truck repair shop, oxy/acetylene sales, iron works, use parts sales and an auto body shop.

The building on Tax Lot 1904 was -- and continues to be -- primarily used for the repair of all types of vehicles and machine shop-types of activities while storage and salvage of vehicles and equipment used in construction, logging, and farming occurs primarily on Lots 1901 and 1903.

The vehicle and equipment repair, along with related uses identified below, are permitted on Tax Lot 1904 and in the existing building on Tax Lot 1904. To the extent the scrap/salvage yard business occurs on Tax Lot 1904, it would be allowed by the non-conforming use approval. Storage of equipment and vehicles for scrap and salvage, and disassembly of equipment and vehicles, occurs primarily on Tax Lots 1901 and 1903. Nothing in Condition A for LUD-012-05 limits uses on Tax Lot 1904 that are otherwise permitted in the RRSC Zone, but rather the decision allows additional uses to the extent such uses may have become non-conforming.

Mr. and Mrs. Humbert believe that the decision was written in broad terms to allow continuation of the established uses on the property, as enumerated in Section 3, quoted above, as well as uses that could be permitted in the RRSC Zone. These uses have continuously occurred on the site since at least 1974, when Humberts acquired the property.

The following Table lists uses that Mr. and Mrs. Humbert believe have been approved or which are allowed as permitted uses:

Permissible Uses on Tax Lots 1901, 1903, & 1904

Tax Lot (Zoning)	Uses Historically and Currently Occurring	Permitted (P) or NC Use
TL 1904 (RRSC)	Repair and servicing of vehicles, including vehicles that might be considered "heavy equipment" and used for construction, logging, and farm equipment, including trucks commonly used in these activities.	P
	Vehicle and equipment repair, including repair of radiators, motor overhaul, transmissions, build hydraulic hoses and cylinders, frame repair and replacement, rear end repair, welding, body work, painting, and so on.	P
	Construction, deconstruction and reconstruction of vehicles (e.g. lengthen or shorten truck frames, convert single axle to multi-axle vehicles, repower trucks from 200hp to 650hp, change gear ratios, build truck beds, drop boxes, trailers, lowboys, conveyors, irrigation conveyors, and related equipment, etc.)	NC
	Department of Transportation annual vehicle inspections	P
	Sales of the following items: -Welding supplies, oxygen, acetylene, helium, argon, and other mixed gasses; -Plastic and galvanized culvert, new and used; Any form of iron or metal, new and used; -New and used parts for truck repair from bumper to bumper; -Batteries from lawnmower size to 12-volt batteries of various sizes	P (Welding items, possibly CUP)
	Storing parts from vehicles for reuse and resale (scrap/salvage yard); retrieving parts from storage for reuse and resale	NC
TL 1901 (EFU)	Storing parts from vehicles for reuse and resale (scrap/salvage yard); dismantling vehicles and retrieving parts from storage for reuse and resale	NC
TL 1903 (EFU)	Storing parts from vehicles for reuse and resale (scrap/salvage yard); dismantling vehicles and retrieving parts from storage for reuse and resale	NC

CONCLUSION

Mr. and Mrs. Humbert respectfully request that the Umatilla County Planning Commission confirm that this interpretation is consistent with the uses allowed in the RRSC Zone and the Non-Conforming Use decision for LUD-012-05.

Copy of
Final
signed 10/68/05

**UMATILLA COUNTY PLANNING COMMISSION
FINDINGS AND CONCLUSIONS
HUMBERT LAND USE DECISION #LUD-012-05
VERIFICATION OF NON-CONFORMING USE
ASSESSOR'S MAP #6N 35 25C, TAX LOT #1901, 1903, 1904, 2200 and 2300**

- 1. **APPLICANTS:** Public Affairs Research Consultants, P.O. Box 549, Weston, Oregon 97886.
- 2. **OWNERS:** Map # 6N 35 25C, Tax Lot #1904, Samuel & Guy Humbert, 53293 Triangle Road, Milton-Freewater, Oregon 97862.

Map #6N 35 25 C, Tax Lot #1901, 1903, 2200, 2300, Humbert Construction, 53293 Triangle Road, Milton-Freewater, Oregon 97862.

- 2. **LOCATION:** The five parcels constituting the subject property are located north of Highway 332, abutting the east and west sides of Poverty Lane, approximately 3/4 miles north of the city limits of the City of Milton-Freewater.

3. REQUEST/BACKGROUND:

The applicants are requesting verification of a non-conforming use. This request, if approved, would allow the applicants to operate a salvage/scrap yard and heavy equipment operation base on the five subject parcels. The applicant states that these businesses have been operating on the subject property since the owners acquired ownership in 1974. This application request is the result of an on-going code enforcement action for accumulation of solid waste in an RSC and EFU zone.

According to the applicant, a variety of businesses have been established on the subject property have been established on the subject property. The applicant states that prior to the owners buying Tax Lot #1903 and 1904, the prior owners attempted to establish a sawmill operation, auto repair shop, auto body shop, machine shop, sales of power saws, sales of automotive parts, wrecking yard and wrecking service, radiator repair shop, backhoe service and logging operation base. Since 1974, the current owners have operated a wrecking yard, machine shop, welding shop, logging operation base, heavy equipment operation base, heavy equipment repair shop, truck repair shop, oxy/acetylene sales, iron works, use parts sales and an auto body shop.

The applicant states that two of the above mentioned uses, specifically the heavy equipment operation base (contractor storage) and wrecking yard, have expanded onto Tax Lot #1901, 2200 and 2300. According to the applicant, these businesses have been in continuous operation on all five subject parcels for the last ten years.

of Poverty Lane. Tax Lot # 2200 has access off of Poverty Lane. Tax Lot #1904 has direct access off of Highway 332. Tax Lot #1901 has access off of Poverty Lane and Tax Lot #1903 is legally land locked at this time.

8. **ROAD TYPE:** Highway 332 is a paved, two-lane State Highway. Poverty Lane is a graveled private easement.
9. **EASEMENTS:** Poverty lane is a dedicated private easement and runs along the east property line of Tax Lot #1904 and 1901, as well as the west property line of Tax Lot #2202 and 2203. A vacated road runs between Tax Lot #2300 and 2200. There does not appear to be any additional easements located on the subject property.
10. **ADJACENT LAND USES:** A variety of land use zones and uses surround the subject property. Lands to the north, west and south of the subject property are predominantly composed of Exclusive Farm Uses parcels currently engaged in orchard production. A small, rural retail service commercial area lies to east of the subject property between Poverty Lane and State Highway 11. The commercial zoned parcels include a car dealership, manufactured home park and drive-in theater.
11. **UTILITIES:** No utility descriptions were included in the application. Most dwellings and businesses in the surrounding area are serviced by Pacific Power & Light for electricity and Qwest for telephone services.
12. **WATER/SEWER:** According to the applicant, exempt domestic wells are provided for the three manufactured homes on the subject property, as well as the car dealership on Tax Lot #2300 and the shop on Tax Lot #1904. Additionally, the applicant states that all sanitation systems drain into DEQ approved on-site sewage disposal facilities.
13. **VERIFICATION OF NON-CONFORMING USE, COUNTY DEVELOPMENT CODE SECTION 152.600:** The criteria is provided in underlined text followed by the response in standard text.
 - A. Property owner may make application to the Planning Department to verify the lawful use of a building or a structure or of any land or premises lawfully existing at the time of a change in the official zoning maps or ordinances. The official County zoning map, applicable to the subject property, was adopted in 1983 and contain similar allowed uses as the current zoning maps (see exhibit #4). Applicants are not attempting to qualify under this criteria (See Finding C below.)
 - B. The Planning Director, or its designee, will review the application and make a recommendation if the use lawfully existed at the time of a change in the official zoning maps or ordinances, and that the use complies with all other requirements to constitute a

One aerial photo (Exhibit #2) was taken in August of 1977. The aerial photo reveals that a large amount of material (scrap metal and/or equipment) was encompassed in Tax Lot #1903 and 1904. The material was beginning to expand into Tax Lot #1901. Tax Lot # 2200 and 2300 were vacant except for the pre-existing non-conforming manufactured home and shop fronting on State Highway 11 on Tax Lot #2300. No materials appeared to be located on Tax Lot #2200 and 2300. A color aerial photo taken recently (Exhibit #3) as well as code enforcement photographs (Exhibit #6 and 7) reveal that storage of scrap metal and equipment have expanded onto Tax Lot #2200 and 2300, but it is unclear as to the date the expansion began to encroach upon Tax Lot #2200 and 2300. Additionally, the original 31 signatures provided do not state that the contractor storage and salvage/scrap yard uses were located on Tax Lot #2200 and 2300. Therefore, it appears that the expansion of these uses were not permitted and not legal pre-existing uses for ten continuous years prior to June 29, 2001.

- D. If the applicant submits evidence providing the existence, continuity, nature and extent of the use for the 10 year period, a rebuttable presumption is created that the use, as proven, existed at the time the applicable zoning map or ordinance was adopted and has continued uninterrupted until the date of application. Based upon documentation and aerial photos submitted by the applicant, as well as conversations with code enforcement and an adjacent property owner, staff can only conclude that the contractor storage and scrap/salvage yard uses existed on Tax Lot #1904, 1901 and 1903 for the ten year period leading up to June 29, 2001. Therefore, a rebuttable presumption that Tax Lot #1904, 1901 and 1903 constitute a legal non-conforming use appears relevant.

There is not sufficient evidence to prove a rebuttable presumption that the contractor storage and scrap/salvage yard uses existed on Tax Lot #2200 and 2300 for a ten year period prior to June 29, 2001. Pictures from Umatilla County Code Enforcement clearly reveal the stockpiling of operable and inoperable machinery, as well as the accumulation of scrap metal, dumpsters, drop boxes, etc. have expanded onto the two parcels, but the date of the expansion and proof that the expansion was legally established and in continuous business operation for ten years prior to June 29, 2001 has not been adequately addressed by the applicant or verified by planning staff.

- E. In no event will the applicant be required to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately preceding the date of application. The applicant is not required to prove the existence, continuity, nature and extent of the non-conforming use for a period exceeding 20 years immediately preceding the date of application.

BASED ON THE ABOVE STATED FINDINGS AND CONCLUSIONS, THIS LAND USE DECISION APPEARS TO COMPLY WITH THE STANDARDS OF THE UMATILLA COUNTY DEVELOPMENT CODE, AND IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

- A. The heavy equipment operations base (contractor storage) and scrap yard/salvage yard be confined to the three legal non-conforming parcels (Tax Lot #1901, 1903 and 1904) that existed prior to aerial photos taken in 1977 and have been in continuous operation for ten years prior to June 29, 2001.
- B. A sight obscuring fence shall be erected around Tax Lot #1901, 1903 and 1904 to assure that the legal non-conforming uses are confined to the three legal non-conforming parcels and that adverse impacts to adjacent property owners are minimized.
- C. Obtain written verification from the Oregon Department of Environmental Quality that authorized uses can legally continue.
- D. A plan and time line shall be approved by the Umatilla County Code Enforcement office for abatement of the existing salvage/scrap materials on Tax Lot #2200 and 2300.

Clinton B. Reeder
Chairman
Umatilla County Planning Commission

10-28-05
Date

Attachments:

(3A)

Umatilla County

Department of Resource Services and Development



October 28, 2005

Director

Tamra Mabbott

Planning &
Development
Division:

LAND USE
PLANNING
541-278-6252

CODE
ENFORCEMENT
541-278-6300

Emergency
Management
Division:

EMERGENCY
MANAGEMENT
541-966-3700

CHEMICAL
STOCKPILE
EMERGENCY
PREPAREDNESS
PROGRAM
(CSEPP)
541-567-2084
541-966-3700
1-877-367-2737

County/State
Services
Division:

COUNTY FAIR
541-567-6121

State Agency
Liaisons:

OSU EXTENSION
SERVICE
541-278-5403

WATERMASTER
541-278-5456

Samuel & Guy Humbert
c/o Public Affairs Research Consultants
P.O. Box 549
Weston, OR 97886

RE: Planning Commission's Findings & Conclusions; Commencement
of Appeal Period for Land Use Request #LUD-012-05

Dear Samuel & Guy:

Enclosed is a copy of the Findings of Fact and Conclusions of Law relative to the County Planning Commission's approval of your above conditional use request. A statutory 15-day appeal period commences on October 28, 2005, the day after the Findings and Conclusions were signed by the Planning Commission Chairman. The appeal period will be over at 5:00 p.m. on Saturday, November 12, 2005.

Please note that yourself, notified property owners or affected agencies that have participated or testified during the approval process can appeal the Planning Commission's decision to the Umatilla County Board of Commissioners. Appeals must be made in writing on the proper form available at the Planning Department Office and addressed to the Umatilla County Planning Department, 216 SE 4th Street, Courthouse, Pendleton, OR 97801. The appeal shall state reasons for the appeal and alleged errors made on the part of the Planning Commission. The appeal fee is \$300.

We will contact you when the appeal period is over and inform you whether an appeal has been filed.

If the above is not clear or if we can be of further assistance, please do not hesitate to contact this office.

Sincerely,

J.R. Cook
Assistant Planning Director

enclosure

cc: Joann Ackerman, Umatilla County Code Enforcement, Oregon Department of Environmental Quality, Tracy Diehl, County Assessor's.

September 7, 2004

Umatilla County Planning Department
Attn: J.R.

RE: Tax Lot 1903 & 1904

Dear Planning Department:

The property located at tax lot 1903 and 1904, also known as 54841 Hwy 332 Milton-Freewater, Oregon has had many uses over the years.

Prior to 1974 John McMunn owned the property and ran various businesses from this location. Some of the businesses that the undersigned remember are:

- | | | |
|-------------------------|-------------------------------------|-----------------------|
| <i>Randy Kessler</i> | • Sawmill | <i>Zee Deschaine</i> |
| <i>Orrington</i> | • Auto repair shop | <i>Lynn Stucke</i> |
| <i>Ernest Wilmet</i> | • Auto body shop | <i>Walt Ady</i> |
| <i>Ed Burlingame</i> | • Machine shop | <i>Joe Hoff</i> |
| <i>Jerry Maccaroni</i> | • Sales of power saws | <i>Carl Kutschker</i> |
| <i>Jim Vento</i> | • Sales of automotive parts | <i>Merlin Johnson</i> |
| <i>Richard L. Meier</i> | • Wrecking yard and wrecker service | <i>Ervin Kessler</i> |
| | • Radiator repair shop and | |
| | • Backhoe service | |
| | • Logging operation base | |

Since 1974 Sam & Guy Humbert have owned the above mentioned property. They have operated over the years the following:

- Wrecking yard
- Machine shop
- Welding shop
- Logging operation base
- Heavy equipment operation base
- Heavy equipment repair shop
- Truck repair shop
- Sales of oxygen, acetylene, iron, and new & used parts
- Auto body shop

Please take the above information into consideration when considering our request for a change in land use of this property.

September 7, 2004

Umatilla County Planning Department
Attn: J.R.

RE: Tax Lot 1903 & 1904

Dear Planning Department:

The property located at tax lot 1903 and 1904, also known as 54841 Hwy 332 Milton-Freewater, Oregon has had many uses over the years.

Prior to 1974 John McMunn owned the property and ran various businesses from this location. Some of the businesses that the undersigned remember are:

Ed Rand
Tom Osborn
Willie Whitcomb
Don Carley
Dan K. [Signature]

- Sawmill
- Auto repair shop
- Auto body shop
- Machine shop
- Sales of power saws
- Sales of automotive parts
- Wrecking yard and wrecker service
- Radiator repair shop and
- Backhoe service
- Logging operation base

Vergil Munk
Larry Larson
Deirdre Haney
Tom Steadman
[Signature]

Since 1974 Sam & Guy Humbert have owned the above mentioned property. They have operated over the years the following:

- Wrecking yard
- Machine shop
- Welding shop
- Logging operation base
- Heavy equipment operation base
- Heavy equipment repair shop
- Truck repair shop
- Sales of oxygen, acetylene, iron, and new & used parts
- Auto body shop

Please take the above information into consideration when considering our request for a change in land use of this property.

September 7, 2004

Umatilla County Planning Department
Attn: J.R.

RE: Tax Lot 1903 & 1904

Dear Planning Department:

The property located at tax lot 1903 and 1904, also known as 54841 Hwy 332 Milton-Freewater, Oregon has had many uses over the years.

Prior to 1974 John McMunn owned the property and ran various businesses from this location. Some of the businesses that the undersigned remember are:

- Sawmill
- Auto repair shop
- Auto body shop
- Machine shop
- Sales of power saws
- Sales of automotive parts
- Wrecking yard and wrecker service
- Radiator repair shop and
- Backhoe service
- Logging operation base

Dennis Rogers
Guy Kilmer
John Doughty
Alan Sandberg

Since 1974 Sam & Guy Humbert have owned the above mentioned property. They have operated over the years the following:

- Wrecking yard
- Machine shop
- Welding shop
- Logging operation base
- Heavy equipment operation base
- Heavy equipment repair shop
- Truck repair shop
- Sales of oxygen, acetylene, iron, and new & used parts
- Auto body shop

Please take the above information into consideration when considering our request for a change in land use of this property.

September 7, 2004

Umatilla County Planning Department
Attn: J.R.

RE: Tax Lot 1903 & 1904

Dear Planning Department:

The property located at tax lot 1903 and 1904, also known as 54841 Hwy 332 Milton-Freewater, Oregon has had many uses over the years.

Prior to 1974 John McMunn owned the property and ran various businesses from this location. Some of the businesses that the undersigned remember are:

Robert J. Stepp
Mark Brumback
Rogn Robertson

- Sawmill
- Auto repair shop
- Auto body shop
- Machine shop
- Sales of power saws
- Sales of automotive parts
- Wrecking yard and wrecker service
- Radiator repair shop and
- Backhoe service
- Logging operation base

Since 1974 Sam & Guy Humbert have owned the above mentioned property. They have operated over the years the following:

- Wrecking yard
- Machine shop ✓
- Welding shop ✓
- Logging operation base
- Heavy equipment operation base ✓
- Heavy equipment repair shop
- Truck repair shop
- Sales of oxygen, acetylene, iron, and new & used parts
- Auto body shop

Please take the above information into consideration when considering our request for a change in land use of this property.

CONTINUED HEARING:

Continuation of September 29, 2005 hearing - Variance Request #V-278 -05: Brad & Tammie Williams, applicants/owners. The subject property is located off of Fullerton Road, south of the intersection between Fullerton Road and Old Highway 320, approximately 1/8 mile southeast of the City of Echo. Request is to allow a Variance to the provisions of Umatilla County Development Code Section 152.617(M) (1&3). Approval of the Variance request would allow the applicants/owners to meet ingress/egress criteria of approval for Conditional Use Request #C-1080-05 for a water bottling facility in the Exclusive Farm Use Zone. Criteria of approval for the variance are specified in sections 152.625, and 152.627 through 152.630 of the Umatilla County Development Code. ****NOTE:** Variance application was withdrawn 10/19/2005.

This hearing was reopened, with request for approval of the applicant's withdrawal. Commissioner Horneck moved to accept withdrawal and terminate the hearing. Commissioner Shurtleff seconded. Question called. Motion carried unanimously.

NEW HEARING:

Land Use Decision #LUD-012-05: Public Affairs Research Consultants, Applicants; Samuel & Guy Humbert and Humbert Construction, Owners. Property is 11.01 acres located north of Highway 332, abutting the east and west sides of Poverty Lane, approximately 3/4 miles north of the city limits of Milton-Freewater, Oregon. REQUEST is the verification of two non-conforming uses (wrecking/salvage yard and heavy equipment operation base), on property described as Tax Lots #1901, 1903, 1904, 2200 and 2300 on Assessor's Map 6N 35 25C. Applicants are applying for verification of a non-conforming use to allow the continuance of the wrecking/salvage business and heavy equipment operation base. In order to continue operating their business, the applicants must show that the use has been in operation at its present location according to the criteria as outlined in Umatilla County Development Code Section 152.600.

Staff Report: Mr. Cook presented the staff report, noting that the request was to legally verify the above non-conforming uses on the subject parcels, to rectify a current Code Enforcement violation pending on the property since June 29, 2001. The applicant has been working on cleanup, but also wishes to verify the existing non-conforming use, including a heavy equipment operation base/contractor storage, and metal scrap and salvage yard, which are the two uses Mr. Cook believes have "legally" existed on the property for the last 10 years. Mr. Cook pointed out that Exhibit #5 lists all of the uses that the applicant claims have taken place on the parcels, beginning prior to 1974, and leading up to the date of the violation and beyond.

Mr. Cook reviewed the requirements for verification, which were identified in Section C of the Criteria of Approval. He concluded that tax lot #s 1901, 1903, and 1904 meet the requirements, and recommended approval of non-conforming use for those parcels, requiring erection of a

sight obscuring fence around the perimeter to mitigate impact on surrounding property owners. The applicant would be required to acquire verification from the Department of Environmental Quality (DEQ) that the use is in compliance with environmental quality laws, and must immediately cease all contractor storage and stock piling, and salvage of scrap materials on tax lot #s 2200 and 2300. He noted that, according to County Code Enforcement Officers, those 2 parcels have already been cleaned up substantially.

One comment letter was received from neighboring property owner, Joanne Ackerman. She was not against keeping the salvage scrap yard, but was concerned that it would expand.

Commissioner Kaminski commented that he felt that Condition C needed to include the requirement that a statement be received from DEQ that they actually visited the site and found any contaminants to be properly contained or disposed of. Commissioner Standley agreed that he would like verification that any contamination has been mitigated. Commissioner Shurtleff noted that these conditions should be discussed after the hearing is closed.

Testimony from Applicant and Proponents: Justin Baerlocher and Stan Foster with Public Affairs Research Consultants (PARC) represented the applicant, Sam Humbert. Mr. Baerlocher explained that when Mr. Humbert bought tax lots 1901, 1903 and 1904 in 1974, these uses were already going on and he continued them. In 1989 he purchased tax lots 2200 and 2300 and expanded scrap and storage uses to those properties as well. Mr. Baerlocher presented 9 signatures from neighbors agreeing that he had used these properties for the described uses since 1989. These were submitted as Exhibit #9 of the staff report.

Mr. Baerlocher commented that they agreed overall with the staff report, but noted that #4 under Buildings was in error; tax lot 2200 does have a preexisting mobile home, which was there when the property was purchased. They also felt that Condition A should not be included in the Staff Report because all uses have been existing non-conforming uses since before 1990.

Mr. Foster pointed out that Mr. Humbert purchased tax lots 2200 and 2300 in 1989 because there was inadequate water on the property to sustain agricultural use. Shortly after purchasing he removed the dead orchard and began to use the property for additional storage of construction equipment.

Mr. Foster added that proponent, Kevin Granger, who is the son in law of Mr. Humbert, was unable to attend this meeting. He is a county employee and was uncomfortable coming forward for that reason. They reserved the right to submit written testimony from Mr. Granger should they find it necessary to appeal.

Mr. Foster noted that they would request that Condition A be modified to add tax lots 2200 and 2300; they feel that they have provided adequate evidence that the use has been existing. They have a USGS aerial photo from 1994 that shows storage on the site and roads. Even the

comment letter from the neighboring property owner indicated that the use was ongoing for an extensive period of time. He also noted that Mr. Humbert has made a good faith effort to clean up the property, having removed approximately 1,500 tons of scrap metal, and asked that the Planning Commission not impose a requirement for DEQ review.

Commissioner Shurleff noted that visual evidence indicated that the property was being used as more of a junk yard than an operating storage and salvage yard. Ms. Mabbott clarified that Humbert Refuse is a solid waste franchise for household waste and has a land use permit for their landfill outside of Athena, but there is no license on the subject property. Mr. Foster added that Mr. Humbert utilizes this site to support his equipment and construction operation only. When the equipment being stored is obsolete it is recycled. Commissioner Kaminski commented that he does not see an effective operation for reclamation of oil, hydraulic fluids, etc., from equipment on the site, and he is concerned about surface contamination. Chairman Reeder noted that the county also has limitations on parking unlicensed vehicles on property, and Mr. Cook confirmed that it is part of the reason for the code violation at the site, as well as the other solid waste on the property.

Mr. Humbert testified that he has done extensive cleanup of the property. Spilled oil at the site will be cleaned up and excavated down, and clean soil brought in if necessary. Mr. Cook verified that much cleanup had been done, although the code violation is still not cleared. Mr. Humbert explained that he is also constructing a 6 foot cyclone fence with slats for site obstruction.

Mr. Cook explained that tax lots 2200 and 2300 are zoned Exclusive Farm Use (EFU) so they are restricted to farm use, except for a small portion of tax lot 2300 which is zoned Retail/Service Commercial (RSC). That portion has been approved for vehicle sales, so storage of vehicles would be allowed.

Gary Kelly testified that the property has been being used for storage for an extensive period of time. He stated that he first visited Mr. Humbert's property in 1990 because he needed a part from a truck that was being stored there. He went back to the property in 1996 for metal to put up a sign. He noticed at that time that the old truck he had taken parts from previously was still there, although much of it had been parted out. Mr. Kelly also noted that there was not nearly as much scrap on the property now as there had been.

Testimony from Opponents: None

Testimony from Public Agencies: None

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Hearing Closed; Planning Commission Deliberation and Decision: Chairman Reeder suggested reviewing conditions for tax lots 1901, 1903 & 1904 and then making a decision on tax lots 2200 & 2300.

There was discussion regarding whether Condition C should require DEQ permits. Chairman Reeder commented that if the site was licensed as a scrap yard DEQ would be involved in permitting. Ms. Mabbott agreed that, if the property is permitted today as a preexisting non-conforming contractor's scrap yard, DEQ would treat it as a scrap yard rather than just a county code violation and permit it as such. After much discussion, it was agreed by the Commission and Mr. Humbert that the property should be given scrap yard and contractor's storage designation. Written verification would be required from DEQ confirming that the uses can continue.

The Planning Commission discussed the fact that tax lots 2200 and 2300 were zoned EFU at the time of purchase. The property was purchased with the intent of expanding storage, which is not an allowed use on EFU land and would require a zone change. It was decided that present operations be confined to the existing 3 lots. Staff was directed to strike the first sentence of Condition D, and strike the word accumulation from the last sentence

Commissioner Shurtleff moved to accept Land Use Decision #LUD-012-05 in accordance with amendments made this date and accepting the 9 exhibits. Also accepting the findings as stated. Commissioner Colgan seconded. Motion carried unanimously.

OTHER BUSINESS:

PowerPoint Presentation: Ms. Mabbott and Mr. Cook gave a PowerPoint presentation entitled "Umatilla County - Our Role in Developing a Plan for Sustainable Water Supply"; a summary of Groundwater Task Force goals.

ADJOURNMENT:

The meeting was adjourned at 10:00 p.m.

Respectfully submitted,



Heather Smith
Secretary

October 27, 2005 Planning Commission Hearing
Humbert Verification of Non-conforming Use
Word-for-Word Transcription

JR Cook: . . . "The request is to legally verify a non-conforming use on the five subject parcels. This originally came about as a result of a code enforcement violation that we have on record on June 29th of 2001. The applicants been working to clean up some of those parcels but also applied to verify an existing non-conforming use that includes a heavy equipment operation base, contractor's storage, as well as, a metal, scrap and salvage yard. There was a multitude of uses that were applied for in this verification as you'll see on the exhibit 5, which is page 17, it's the best one to look at. *You'll see that there's quite a list of uses that the applicants have stated have taken place on the parcel beginning prior to 1974 and leading up to the day of the violation and beyond. What I've done is narrowed down the uses to two uses that I see have legally existed, or, or I guess seem to legally exist on a subject property for the last ten years, which is the contractor's storage, outside heavy equipment storage, and the salvage/scrap yard.* The criteria for approval for a verification of a non-conforming use is in Section 152.600 of the Umatilla County Development Code and it really is straight out of a case law and the Oregon Revised Statute as far as verification of a non-conforming use.

The first couple of criteria of approval are being taken care of with this public hearing, basically it states that the Planning Commission shall hear, or a Hearings Officer shall hear, a non-conforming use application on Exclusive Farm Use zoning. The actual verification of the use is identified in Section C of the criteria of approval and the first one, number one, that the use lawfully exists at a time of a change in the official zoning maps or ordinances, and that the use has continued uninterrupted until the date of application. I placed a 1981 zoning map which is on page 15, also exhibit 4, of your application that shows that the zoning in 81 was the same as the zoning now.

There's a multitude of the Exclusive Farm Use parcels which are 1903, 1901, 2200 and split zoned 2300, as you'll see on the map, and 1904 has always been Retail Service Commercial, that's since 1981 as you see in the evidence provided by the applicant. They've stated that the uses have been in existence since prior to 81. On the map that, the best way to identify that is in the aerial photo that's provided from 1977, that's exhibit 3. You'll see that a down, it's not laid out as far as writing, but a, see kind of in the south portion of the aerial photo the drive thru . . . drive-in theater, you can see looks like a bunch of ribs, and just to the west of that drive-in theater is the shop that Humbert Construction owns and you'll see that there's quite a bit of outside storage of materials around the shop, as well as, extending into 19, I believe that is 1901, and, 1901 and 1903 to the north. Therefore, the uses look like they were in existence prior to our zoning maps being implemented in 81, on those three parcels.

Number two, that 'the presumption under Section 152.600 (D) is not rebutted, that the use continually existed for the ten year period immediately preceding the date of application, the ten year period would be from, ten years prior to June 29th, 2001, that was the date that the parcels went under code enforcement violation for solid waste.

There's no receipts or anything in this application that can legally, you know, put a rebuttable evidence together that the use existed but there is signatures from surrounding property owners and people that know Humberts and Humbert Construction that state that the use was in existence on Tax Lots 1903 and 1904 prior to 1974, and also since the Humberts have owned it after 74. To really summarize the other conditions of approval, basically for an application to be considered and approved for a verification of a non-conforming use there's two primary criteria. One that it has existed continually for the last ten years, and two, that the use was legally established prior to a zoning law going into effect. Those are the two main points of evidence that have to be provided to give a rebuttable, proof that it, existed, and legally existed. I've made the conclusion from what I saw in the staff report provided by the applicants and also

in review of aerial photos, which there's large aerial photos from 1977 and 1988, that I provided there in those blue-line pictures, that the use did indeed, extend and expand, on 1904, 1903 and 1901. I haven't been provided proof that the uses legally expanded on Tax Lots 2200 and 2300, which are the larger parcels to the east of Poverty Lane and on the map. From this conclusion, and from the evidence I've been given I made the recommendation that we approve the non-conforming use on three Tax Lots, 1904, 1903 and 1901, with a couple of conditions of approval. One that a site obscuring fence be erected around those parcels to mitigate for any adverse impacts to adjacent property owners. This will also allow the applicant and land owner as well as our code enforcement officers to know which areas are legally non-conforming and which areas aren't. I've also included that the applicant obtain verification from the Department of Environmental Quality that this is indeed in legal compliance with, you know, environmental quality laws. And that the applicant and land owner immediately cease all contractor storage and stockpiling salvage scrap materials on Tax Lots 2200 and 2300.

Those two parcels, in speaking with Larry Rowan, who's one of our Code Enforcement Officers, as well as, Ted Burrows, those two parcels have already been cleaned up substantially. It's been a couple of years since the applicant and I've been talking about how we can go about getting the area legally approved so that he can keep some of those uses established on that without our Code Enforcement Officers always out there keeping him under violation. He's made pretty good progress on cleaning it up even though it has, most likely, been a legal non-conforming use on three of those parcels. That's my recommendation. I'll open it up to questions and discussion and a, we'll just ask that a, you look at one letter of, which is not so much in opposition as a comment letter, received from Joanne Ackerman, who's a notified property owner, who states that she has lived there 37 years and that she isn't against the applicants keeping a salvage scrap yard on the subject property she doesn't want to see it expanded. And that's the only letter of, maybe, opposition I've received since the public notice."

JR: "Go ahead."

Commissioner Kaminski: "JR the only question I would have is your Condition C. In terms of the DEQ, ah like the Ackermans and probably like Ted Burrows, I've also been on the site and if you've been on the site you can see over the years there's been a lot of operations there that have been probably detrimental to the graveled yard. You know there's, fuels, there's oils, there's cleaning solvents, there's batteries, there's all sorts of things that have taken place on that site. That I'm sure are probably doing nothing for the gravel yard. There are a number of wells and I haven't really, really, counted the number of wells that would be in the immediate vicinity there, but I think what we need to do in C, is one of the Conditions for the approval, I think instead of just saying that we need verification from DEQ we need some sort of a blessing that they have either contained the contaminates or disposing them properly, something along those lines. I think we need something from that agency that says in fact that none of that stuff is going into the ground. Because having been out there, I'll tell you what, there's stuff on the ground that's probably leeching into the ground water. So I think, you know, something a little bit stronger in C. Now I'm not sure how you'd want to word it, but other than obtaining verification from them I'd like to see some sort of a statement, a letter, that they've actually visited the site and they've determined that there's some containment and disposal of those hazardous wastes."

Chairman Reeder: "Concurrence or not?"

Commissioner Standley: "I like the word mitigated. I like something in there that, that there might have been something dumped over, tipped over, it's been picked up and cleaned up and mitigated so that it's no longer a threat, or posing a continuum of, of a, threats. You know, other than a, it's very difficult once you start getting permits and certifications from DEQ that could go on for, forever. A, but if something's out there and it's cleaned up or picked up or mitigated than that's no longer a continuum. So, that's my feeling of it."

"Mr. Chairman?"

Chairman Reeder: "Yes."

Commissioner Shurtleff: "A, we haven't heard, my understanding is this is a question period of staff and we haven't heard from the others."

Chairman Reeder: "Yea, yea, right, I'm just writing it down as a suggestion at this point."

Commissioner Shurtleff: "I would submit that we're not at the point in the hearing where we should be discussing the conditions that we wish to put on it."

Chairman Reeder: "Okay. Any further clarification from JR before. . ."

Commissioner Colgan : "Yea, along that line to DEQ and the County, you know, what you're recommended here, just as a general question. Essentially you would have to defer something like that to their prerogative whether there's an issue there or not. I don't know how you write that you would like them to determine if there's an issue or if that's something in process that you would normally do. This appears to be, you know, you're wanting them to do their job - DEQ, i.e."

JR: "Yea, they've, our Code Enforcement office has been in contact with DEQ on this site, I don't, there's nothing in the file, code enforcement file, that there's any violation from the Department of Environmental Quality on that site. Like, you know, we're basically land use planners and we go off what their recommendations are and to have written confirmation from them that the site meets standards or is exempt, like some sites are, is what these types of requirements can do. It's a lot like the exempt well issue or other water issues there's only so far our jurisdiction can take us."

Commissioner Colgan: "Right, I guess we'll get to that in conditions but essentially I don't think we can, you know, ask for, or put in as a condition that something be mitigated. It's no different than DEQ showing up to someone who's burning something without, you know, without a permit or they get called out somewhere and they find something they will take an enforcement action. "

Chairman Reeder: "Let's come back to that. Anything else, okay, any abstentions? Anyone wish to abstain from considering this? Okay we'll proceed then. When you come up to testify give your name and address for the record please, and try to be specific . . . should be addressed why make sure those and any records you can make that makes that specific so we can follow up on it would be helpful, and it protects your rights of appeal, if you want to appeal a part of this at a later time. So, the applicant, want to make a presentation or representative for the applicant, alright?"

Applicants' Representative: "Do I come here?"

Chairman Reeder: "Yea, to the table."

JR: "State, state your name and address for the record, please?"

Applicants' Representative: "Thank you Mr. Chairman. My name is Justin Baerlocher I'm from Public Affairs Research Consultants; my address is 16203 SW 2nd Street, Pendleton, Oregon."

"My name's Stan Foster, I'm also with Public Affairs Research Consultants. PARC is our acronym, which is a lot easier. And our address is a 101 East Main, Weston, Oregon, 97886."

Chairman Reeder: "Okay."

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Justin Baerlocher: "I guess I'll start off, again we are [representing] Mr. Humbert on this issue. Mr. Humbert has bought properties 1901, 1903 and 1904 and in 1974, as JR indicated earlier these uses have been going on, on the property since before Mr. Humbert purchased the property. He's continued those uses on this property. In 1989 he purchased Tax Lots 2200 and 2300 shortly after he purchased these properties he had a standard in his use on those properties. I'd like to submit to the record an additional nine signatures from surrounding neighbors identifying that these two properties have been used, that they recall Mr. Humbert using these, this property for this use since he purchased it in 1989."

(Chairman Reeder gave instruction on submitting materials.)

JR: "Those will be submitted as exhibit 9 of the staff report."

Justin Baerlocher: "As far as the staff report, we feel that there are a few errors in the staff report, overall it's a good staff report. One error that we'd like to identify, and to be corrected is the Number 4, under Buildings, Tax Lot 2200 does have a structure on it, in the southwest corner of the property there is pre-existing, non-conforming mobile home."

Chairman Reeder: "Do you have a date when that was installed?"

Justin Baerlocher: "I do not have a date when that was installed."

Stan Foster: "It was there when Mr. Humbert purchased the property."

Chairman Reeder: "Alright."

Commissioner: "Can I have that description, what corner of 1904 was that on?"

Justin Baerlocher: "The southwest corner of 2200."

Commissioner: "Of 2200, alright."

Chairman Reeder: "Okay."

Justin Baerlocher: "So we feel from that Condition A should include, not [inaudible] staff report we feel all of these uses have been conforming, non-conforming uses, since before 1990. [inaudible], now I'd like to turn it over to Stan and he'll add a few more comments."

Stan Foster: "Thank you Commissioners, I just wanted to point out that Mr. Humbert purchased the Tax Lots 2200 and 2300 in 1989, the basis of his purchase of that was that there inadequate water on that property to sustain agricultural use so it had no agricultural value and that's why he purchased it at that time and [inaudible] was one those was of the owners that he actually purchased that from. In 1989 shortly after Mr. Humbert purchased it there was a dead, basically a dead orchard, on there that you aerial photographs of at that time. And he removed the orchard and began to use it for additional storage for his construction equipment. We have an individual here who'll testify on behalf of the proponents, Mr. Gary Paylie from College Place, that will also testify to the fact that on 2200 and 2300 that the there was this, the current non-conforming use was in effect in 1990. The other thing that we would like to add there's an additional, there's an additional component a, Mr. Kevin Granger who's the son-in-law of a Mr. Humbert who couldn't be here tonight, who works for the County and felt somewhat awkward about coming, coming forward because of that, that case, we'd just like it noted that should it be necessary to appeal that we reserve the right to submit written testimony from Mr. Granger at that point. I would note that, that I a, on the a, conditions that are being asked for by a planning staff we would agree with that

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with no exceptions to, to those except for Condition A and C. Condition A being modified to add 2200 and 2300 we feel like we have provided adequate a evidence that that use has been a in effect we have a USGS aerial photograph which [Justin, "it was part of that that submittal second page."], that a, was taken in 1974 that clearly shows the storage on the site, roads cut in there a, unfortunately we don't have a photograph of that time clearly [Justin, "1994."] a, 1991, I apologize a, but we, we feel like we provided adequate anecdotal evidence from the surrounding property owners and as your planning staff noted even the quote, end quote, opposition letter indicated that that use had been on-going for as long as she could remember. So we would ask that the condition modify the, the Commissioners modify the Conditions of Approval to include 2200, 2300 and all five tax lots be granted a, approval under this criteria. We'd note that the a, the applicant is currently erecting an fence so that condition is already underway that's a voluntary a matter. As far as obtaining verification from DEQ a, we were unsure of what that meant as obviously the Commissioners were. We would note that if you were going to require that kind of condition that if you drive around the county on every EFU parcel, large agricultural operations, you'll see a number of equipment parked in, in those EFU fields and so if you're going impose a criteria upon Mr. Humbert that we clean up the back yard here we would have to equally apply to everybody else that a had those kinds of of situations and you certainly all, all know that there's equipment all over Umatilla County and particularly in EFU areas. We know that Mr. Humbert has a, has made up a [inaudible] effort to, to clean up those areas but he has operating a viable continuous business in the Milton-Freewater area this is necessary for the on-going operation of his business and a, like a lot of good a resourceful individuals a, somebody's junk is another person's treasure a, Mr. Humbert operates a lot of equipment and he salvages parts off one piece of equipment and a, and a, use that on your operating equipment. I, I'd also ask that a, that it be noted that, that, this parcel here, I apologize probably tons of, of scrap metal we've removed from there."

"1500 pounds."

"Okay."

Stan Foster: "1500 pounds that have been removed and once those, once those vehicles, or those, this equipment is a no longer useful it goes through a scrap, a scrap yard in Walla Walla and is recycled. So it's part of an on-going operation. Mr. Humbert is also a solid waste collector although this is not the site of his solid waste collection but is a supporting of some of his equipment. That, with that a, said we a, we would ask that the Planning Commission to approve the, the request as indicated by the, the a Planning Staff with the inclusion of 2200 and 2300 as, as a, in all five of the legal non-conforming parcels and then we would ask if there's DEQ a, if there's a specific permitting or authority that, that you can mention for DEQ on this. DEQ is aware of this, this parcel, as indicated by your staff, they have not, Mr. Humbert has not been cited for a hazardous materials discharge or any violation from DEQ permits at this time. We think it would be onerous and a, and excessive to impose that a, for there's no violation and I guess rhetorically I would ask how many of us would invite DEQ onto our property?"

[Laughing]

"I will."

"[inaudible], some exceptions."

Stan Foster: "Well, I mean, we all have, we all are participating in the regulatory process like DEQ and Mr. Humbert is certainly willing to do that, but a we, we don't believe we have a violation with any hazardous material or pollution at that point and there no, no points or evidence to that effect. And we'd be glad to respond to any questions that the Commission has."

"Stan?"

Chairman Reeder: "Any questions or for these two people?"

Commissioner Colgan: "You mention that, that a, the owner was a, you used the term a solid waste collector. He's not a permitted solid waste . . . ?"

Stan: "Yes he is."

Commissioner Colgan: "Oh, he is a permitted solid waste but not at that location."

Stan: "Not at that location but you know he's operating equipment and he repairs and services."

Commissioner Colgan: "Understand."

Tamra: "He's a franchise solid waste hauler and they have a, a licensed land fill outside of Athena."

Commissioner Shurtleff: "I would ask the question. What was the a, what was the, what was the owner's intent and intended purpose when he originally purchased a 2200 and 2300?"

Stan: "Support his, his a, construction operation that he has on the first three parcels. So."

Commissioner: "At that time, he needed room to expand? Is that . . ."

Stan: "He needed additional space storing his, his heavy equipment and that parcel was not viable from agricultural stand point due to an inadequate water. And that is why he purchased it but the orchard that was there at the time had ceased to be operated and was in process [inaudible] most of it was dead."

Commissioner Shurtleff: "I'm not able to identify exactly which lot I'm standing on as I, as I look at the, the photographic a, a imagery that we have been presented but there's, there's a difference between storing heavy equipment and having a junk yard. And, and a, I would like to hear you address, address this from the terms of do we have a, do we have a, a junk yard like my Dad's place after he left all the pieces of the old logging equipment or do we have a, an operating salvage and storage place? I don't see evidence of things being organized in the way you typically would in a salvage yard. I don't see evidence of things being organized in the way you typically would in a scrap metal yard, according to ferrous metals, non-ferrous, and that sort of thing. Unfortunately, what I do see are engine casings which were rolled out there with oil still in the crank case and, and those kinds of issues and those, those are going to make it difficult for me."

Stan: "I guess I, I would, personally I, I intention is not, is not a junk yard it's an on-going operation and, and really there's a, utilizing that parts of the equipment. You want to add anything Sam to the?"

Sam Humbert: "Well I don't know, was there a question [inaudible]."

Chairman Reeder: "Tamra, Tamra, could you comment relative to that licensing permits on it, the nature of what their licensing is permitted for?"

Tamra: "For the solid waste facility?"

Reeder: "Un-ha."

Tamra: "There's no license or permit on the subject property."

Reeder: "Right."

Tamra: "But Humbert Refuse is, is that the name, Humbert Refuse?"

Reeder: "Right, right."

Tamra: "Has a solid waste franchise to collect household waste?"

Reeder: "You're saying the dump?"

Tamra: "And yes, and then they also have a permitted, a land use permit and they need DEQ permits for the dump, for the, for the landfill."

Reeder: "But, but there's no solid waste or wrecking yard permit or anything on the other, on the other property?"

Tamra: "No, right, that's correct."

Reeder: "Your claiming you're not in the, you're not in the scrap yard business."

Stan: "Mr. Humbert operates a recycling operation out at the Athena dump."

Reeder: "Right."

Stan: "And a, and so he does operate, you know a, recycling, he's not operating it on this particular site. This site is utilized to support his, his equipment operations and his construction operations and then equipment that a, the Commissioner is referring to is utilized as replacement and, and repair of his, his equipment and then once that, once that is obsolete it's recycled through the, the Walla Walla scrap iron."

Commissioner Kaminski: "For your benefit I have been to the site. And what you see here as far as these photographs is probably a true representation. There are batteries that are laying on their site all of this junk is strewn all over the place. With the recent rains, the fields in many cases, have a sheen from the oil, that is on the surface of the ground. So I know there's not very much reclamation from the equipment that's brought in there for either salvage or whatever, there's not that much reclamation from the hydraulic fluids, from the transmission fluids, and the oils. I don't see a, an effective operation that would extract those things and contain them. I see the surface, especially the sheen now with the rain. That shows that's there's an awful lot of surface contamination. I don't know what else it does, but from my observation these pictures are an accurate representation of what's out there, Commissioner."

Question: "My question to you Commissioner have you specifically and with intent gone out and a, looked at this property after knowing that this was to come before the Board."

Commissioner Kaminski: "Yes, yes."

Questioner: "In some cases that's grounds to recuse yourself."

Commissioner Kaminski: "Yes, I have been out there since then. We also have property surrounding there. But I just, well, you know, caution you that is, that is in fact a true representation, for your benefit. That is a true representation of what you see out there."

"I appreciate that."

Stan: "I guess that, that you know, your interpretation, I certainly wouldn't, wouldn't dispute a, your perspective on this, our perspective on that, is that the fluids and the a, the a, various components of the equipment are recycled and are, are drained by the, the to temporarily place them there and once they are obsolete they. . ."

"You know that for a fact?"

Commission Colgan: "You're, you're saying that is fact?"

"No, you just said no! You just stated a fact you know that for a fact!"

Stan: "That is what I believe is the facts, yes."

Reeder: "That is not the same thing as stating a fact."

Stan: "I'm not out there, I'm not out there, doing that."

Reeder: "Okay, but, but the point, the point being raised is, is not operational equipment out there and the issue being brought up is, is the non-operational equipment drained of fluids, are the batteries stored appropriately so you don't have acid spill away from the batteries and so forth. Just a second, okay, okay."

"I've not . . ."

"I'll take that answer a lot more graciously."

[Multiple people are talking in the background.]

Chairman Reeder: "We're not trying to pin your hide to the wall. We, we have a, certain requirements that we have to look at relative to ground water and there are some rules relative to solid waste like vehicles just parked on private property and there not licensed. JR, Tamra?"

Tamra: "What?"

Chairman Reeder: "There are limitations on parking of unlicensed vehicles for instance on private properties beyond a certain period of time that are not in a scrap operation kind of thing."

Tamra: "Yes."

JR: "Right, that's one of the main reasons why this has been in code enforcement violation since 01."

Chairman Reeder: "Okay."

JR: "Was for the vehicles as well as the other solid waste that's on the property."

Chairman Reeder: "Okay. You got a comment?"

Sam Humbert: "My name's Sam Humbert, 53293 Triangle Road, Milton-Freewater. The battery that you spoke of, I do not know where that battery is at. Because we've been picking up batteries for quite some time, we've hauled 1500 pounds of scrap iron out of there by cutting up stuff that code enforcement says was illegal such as big trucks, we've cut up cranes, we've always been where if we had three trucks with the same motor in it we'd find another truck, wrecked or hurt something like that, had the same motor,

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we'd buy that truck so we could move the motor, we got a motor we could put in. The [inaudible] truck would set there until we could either sell pieces off of it, or use pieces off of it, and then we'd cut it up and there's nothing left to it. But we try to run a clean ship and we have been cleaning up tremendously and I don't deny that anybody walked out there could find some oil spots but they will be cleaned up. We will excavating down and we got to get [inaudible] to do it, when we get to it cleaned up we will excavate down until there is none and a, either blade it in with regular soil or haul other soil in, or what have you. But we are in the government business a, we pick up all kinds of trash we understand that, there's not a day goes by that one of the government reps don't stop along side of the road and pick up a tv, a davenport, a mattress, or oil can, or something rather, and we've been trying to help clean up the community ourselves."

Chairman Reeder: "You pick up tires?"

Sam Humbert: "We pick up tires too."

Commissioner Colgan: "I have a question."

Chairman Reeder: "No, somebody just went through our area with a big load of tires and just throwing them out, out of the rig, there must be a hundred tires out there, up and down the road."

Stan: "May I add a little bit to Mr. Humbert's comments? I'd point out he's been under enforcement ever since June 29th, 2001, you know, Sam has operated a business for a number of years and it certainly defies logic that he would use practices that would invite that kind of, of enforcement certainly since June 29th of 2001 he's been [inaudible] experience when I made that statement about, you know, draining oil and those kind of things, this was based on anodal evidence that I have, not physical, I'm not, I'm not pulling those, those engines out of there but, but, he operates a solid waste operation out of Athena he knows the rules, he deals, deals with DEQ under those circumstances and deals with those disposal issues it, it just defies logic that he would not abide by those rules."

Commissioner Colgan: "I have a question for staff." "You went under enforcement, what was the date, again?"

JR: "June, June 29th of 2001 is the current enforcement."

Commissioner Colgan: "And what is the record of compliance with enforcement since that date?"

JR: "Well I don't know if he's been to court on it. The, Ted Burrows came on as our east county code enforcement or basically took over east county code enforcement efforts last year. Before that was Officer Larry Rowan."

Commissioner Colgan: "Okay, the applicant stated that he's taken these measures and I don't have any sense of the time frame from the time he went under enforcement when these measures were taken I note that the photos we're looking at are a year old. And I don't think that's a very good representation to put forth if that's, if that's, not the current condition."

JR: "There also, I had before this meeting had Ted go out and take pictures from October 12th of this year and I had him take pictures so you'd get a better representation cause Commissioner Shurtleff spoke to the fact that he didn't really get a good feel for what is on the property. I had Ted take pictures going north on Poverty Lane on both the east side and west side of the property, which is this here. So this is the accurate portrayal of what is on the property now."

Commissioner Rick Colgan: "But it's on the boundaries of the property."

JR: "No it's contained, yea, if you look at your map. The best thing to do Rick is look at page nine and look at the map of where Poverty is, and Ted's taken these pictures on both the west side of Poverty Lane and as he gets, keeps going north, on the east side of Poverty Lane. That's what these pictures are. He's traveling north on Poverty Lane. These pictures. . ."

Tamra: "But the current pictures are in their packets, aren't they?"

JR: "Yes. Yea, there's, both pictures from 04 and pictures of current. And was cause, to give you an accurate representation of what was there then, and what we see now as far code enforcement."

Commissioner Shurtleff: "Question then. Half of the, the latter half of the pictures in my packet are notably over exposed I take it those are the more current and the darker ones are as it was before? Is that correct?"

JR: "Yea, these, I'll pass around, these are the originals, our copier doesn't make very good copies."

Commissioner Shurtleff: "The later ones look at lot better."

JR: "Yea, the later ones are clearer, yes. Because . . ."

Commissioner Shurtleff: "Well they look a lot better in terms of, of a, stuff being organized and looking like an on-going operation."

JR: "Yea the, as far as before Larry left the east county, as far as our one and only code enforcement officer obviously, he stated that both 2300 and 2400 [2200] were getting better. He wasn't about to clear them, before Ted came on, but he did say the clean-up activities were a lot better, on those two parcels. 1904, 1901 and 1903 on all of our maps in the code enforcement files, it just says, needs work, is basically what it says. So, I mean with that many tons of scrap metal, obviously it's not an overnight operation to get things cleaned up."

Commissioner Colgan: "Another question for the applicant. You mention that you are voluntarily constructing a fence, what type of fence? I know that the recommendation that was listed here says site obscuring fence, of some certain height."

Sam: "It's a cyclone fence, six feet tall."

Chairman Reeder: "With slates?"

Sam: "It can have slates, I hadn't planning to put slates in, but that's no problem, they slide right in."

Chairman Reeder: "Yea. Site obscuring, I think, fence by definition includes the slates. However, out in that area we've had problems with slated, slated fence because the wind takes it out in the road and a so we may need to visit if we need it every place or just certain places. Okay, any other questions?"

Commissioner Standley: "I do have a question. I was under the impression that, initially we were to review the facts whether the property has had the uses listed in here continually from back to the previous year till, till now. Are we also reviewing other issues that, and because of? That's my question. In other words, are we, are we here to evaluate whether or not this property has been used for the use it has been, or since 1974?"

Chairman Reeder: "The fundamental decision, if I understand right, is to, is to say or not say it conforms with rules at this point. In other words it's been in operation continuously for the ten year time period."

Commissioner Standley: "As a, everything listed on this page from a wrecking yard to a salvage yard, to a sawmill, to you know, etcetera, etcetera, correct?"

JR: "I'll clarify, because these are the two main points I wanted to get across in the staff report, obviously I probably didn't do a very good job. There's two things that we're looking at and our code directly reflects the state statutes to a tee, it's just written in our language. Number one is that the use had to have been legally established at the time it was either expanded upon a parcel or established on a parcel. That's number one. That could go back to 1922. I mean basically. You're looking at was it legally established at the time of our code and our code came in and now it's an illegal use.

Number two is that it had to have exist continually for the ten year period leading up to the date of application, which in this case we had to go back to June 29th, 2001, because that was the date of code enforcement violation we can't go to this date, we go to 2001. But we can go as far back as we want on the legally established piece and that's where I can't prove, as far as staff, from this documentation, and it's especially with the applicant purchasing a property in 1989 when we had zoning laws in effect, which were EFU and Retail Service Commercial. That 2200 and 2300 meet that code requirement, from aerial photos and from the signatures I think there's, as far as, a recommendation, that's why I made the recommendation that those three parcels, we could have rebuttable evidence that it does meet the verification. But those are the two main requirements.

The third one, if once you establish that is, a, verify, and verify that's non-conforming, a legal non-conforming use, you can place conditions of approval or criteria of approval on it to mitigate for adverse impacts to adjacent property owners. We have that in our code it's not spelled out as far as adverse impacts but it is in statute and we just relay that into our code. Those are the three main issues with the non-conforming use."

Commissioner Shurtleff: "Question, on the, on the 2200 and 2300 what is the applicant's legal usage of that, those two lots right now?"

JR: "2200"

Commissioner Shurtleff: "What is he allowed to do on there?"

JR: "2200 is a full zoned Exclusive Farm Use zone, so it's restricted to resource activities, orchards, commercial activities in conjunction with farm uses, those types. 2300 is a split zoned parcel, if you'll see, I think it's on page 9 in your packets, but it's, it's Exhibit 1. Is the best way to look at it."

Commissioner Shurtleff: "So."

JR: "There's a small portion of Retail Service Commercial that's, abuts Highway 11. The remainder of that parcel is Exclusive Farm Use, resource protected land. The RSC part of that split zoned parcel, there's been approved uses, mainly vehicle sales, used vehicles."

Commissioner Shurtleff: "But the problem is that, if I'm understanding you correctly, none of those uses support salvage yard or, or a heavy equipment?"

JR: "Right, right at the date our code went in which established the EFU and RSC zones which, that's why I provided the 1981 zoning map was these uses were zoned, or these parcels were zoned for

Exclusive Farm Use and RSC and scrap yards and salvage operations and contractor's storage is not an outright, most likely is not going to be a conditional use, in those parcels."

Commissioner Shurtleff: "But we do have in fact, have testimony that there is not adequate water to support agricultural interests there, does that impact it?"

JR: "No."

Commissioner Colgan: "In other words, the applicant purchased this, this property with that zoning in tact, and should have been aware of what the zoning was when he purchased it."

JR: "Those two."

Chairman Reeder: ". . . all of the information that's available here to us on the table. So you two have anything further to add?"

Stan: "We just, just point out, that as the planning staff just pointed out that one of the parcels does have a split zone on it that did have a, a car, car dealership on it on the, on the frontage part of the highway there and so, you know, even in that regard that portion of the, of the property would certainly suggest that, that we could have storage of vehicles on there. And that we also would contend that we have provided a significant evidence that this, ever since 1990, that this has been an on-going a, use on this parcel, so."

Chairman Reeder: "Okay."

Commissioner: "Can I ask one more question? For your ten year documentation have you checked with the NRCS and their aerial photos?"

"I contacted them yesterday, and the earliest they have was this 1994, which we have." Or that's, that's the most current to that date of 1990."

Commissioner: "That's the most current, but not the oldest."

"No no, that's, that's the, that's not the most current either, it's, it's the closest date to the 1990 period."

Commissioner: "Okay."

"And, and Mr. Humbert purchased that in 1989, so any date prior to that would be conflicting, irrelevant to our, our contentions at this point, our contentions."

Commissioner: "Unless it was used in the same mode, right?"

Stan: "Yea, we, I mean, we can see that when Mr. Humbert purchased that with the exceptions of, of the fact it's on the front, where the car lot was, that it was a failed orchard at that time and that was the reason for the, the sale was that it was, is incapable of supporting it."

Commissioner Colgan: "But still zoned, EFU."

"Yea, yea we don't dispute that."

Chairman Reeder: "Okay."



Sam: "We did buy the property but because we knew there was no water we figured we probably could get it rezoned. So we could be legal in it, and it was a deal that came up for sale and so we bought it with the speculation that we could get it rezoned, but we've never have ruled out getting it rezoned."

Chairman Reeder: "Well, we'll talk about before we get finished. Okay."

"Thank you very much."

Chairman Reeder: "Thank you. Anyone else want to speak in favor of the application, support of the application?"

"I would."

Chairman Reeder: "Alright, if you would please. Your name and address."

"My name is Gary Kelly. I reside at 828 SE Scenic View Drive, College Place, Washington. I had previously been acquainted with a Sam and a, visited this property that you're talking about immediately behind the County Trader area in the early part of 1990, that date came to mind because I was working in Lewiston, Idaho, and only come home on weekends. My father who is deceased now, had taken my only day off to help him with some repairs on the truck and the only place we could get the piece was off an old truck that was on that property behind the County Trader, on Sam's property. I retrieved that piece that we needed and I did not have an occasion to revisit that area until about 1996 and at that time my brother and I had a business in Milton-Freewater called Kelly's Trailer Sales and at that time I went down to get some a, metal for a sign out on the highway, a piece of a, old logging reach that Sam had off of, off one of the logging trailer's that he was cutting up and a, we got that from him put it in the ground and put that sign on it and I noticed at the time that old truck, part of it was still there but the cab was still on and so forth, and I had talked to Sam some here in the last month or so, I had an occasion to be involved in a similar situation like this over in College Place where there's an expansion on a mobile home park and I had a, stopped in to, to visit with Sam and told him what I'd been going through and it was quite a process. And I told him my education in the, in the a, judicial process, or, with a, this kind of a situation, he said he was in the middle of that and that's when I got to thinking about this and started looking at the time frame so I researched that and when I had gone through what I'd gone through I, I knew he was going through a similar situation and I said I think I could shed some light on that so I, I offer this as a, true testimony of what I know to be there. I can tell you today there certainly isn't near the stuff that was there then, so that's all I can tell you that, that may be pertinent to this thing."

Chairman Reeder: "Okay. Thank you, any questions? Okay. Any parting shot before we close this part of the hearing? We will during our deliberations possibly come back to you for clarifications and questions so I'm going to formally close this part of the hearing and then we'll draw on you as needed to make things come out the way, we think they ought to. Alright this part of the hearing then is closed and we'll proceed to deliberate. Do we need clarifications? Number one, does anyone have a problem with the three lots in condition A?"

Commissioner Shurtleff: "1901, 03 and 04"

Chairman Reeder: "Is, is A acceptable, as stated? Assuming that those three lots are all we have to deal with. Is, is condition A, on page seven, acceptable? What I want to do is run through those three lots and see how these conditions fit and then I want to come back to the other two lots and raise some questions about the other two lots. Okay on B a, the one thing that I can see there is that rather than fencing all three lots, assuming they were to consolidate what they have there, it might take less fence. (Discussion) Well yea, but I, I mean if all the stuff goes on one lot you wouldn't maybe want to fence all the perimeter of all three lots you might want to fence just one area that you've got some materials stored on."

Commissioner Kaminski: "There's no way to contain it then."

Chairman Reeder: "Pardon."

Commissioner Kaminski: "There's no way to contain it then. If we're going to give approval they should be able to use all three. They should be able to use all three but the requirements are for all three."

Chairman Reeder: "Yea, I don't disagree with that at all. What, what I'm getting at is we normally require site obscuring fence around the problem area not necessarily all the property and the ownership. So my question is, if you consolidate the trucks and parts and stuff that you have, do we want this, this be, to read, you must fence the perimeter of one, three and four, or do we want it to read, must the items stored there be surrounded by site obscuring fence? I'm just asking a wording question."

Tamra: "To clarify, it does indeed make sense to require the fence only on the area that you grant permission to, so, but I think the applicants are still hoping that their granted permission on all five tax lots. But I think, if they so choose to, well, can I just ask if, where is the fence right now?"

"[inaudible]"

Tamra: "All five tax lots? Where have you started, you haven't finished it, you've only started it?"

"We started on 01."

Chairman Reeder: "Okay, so the intent is to put a perimeter fence on the lots of significance as far as the storage is concerned."

JR: "That's what I recommend, yes."

Chairman Reeder: "Either the whole thing or whatever, whatever, whatever the approval is for then the boundary would be that approved lot. Okay." What about C? Now I'm assuming a DEQ permit will not be issued unless it conforms in all respects. In this case I'm not sure a permit would be required."

Commissioner Standley: "Wouldn't a, on the opposite side of the page article 17 cover that, that they been notified that if they had any comments or concerns they would maybe made some interest."

Commissioner Rinehart: "Not necessarily, they have concerns."

JR: "Sometimes when they read the staff reports that's contained in there concerns, it's hard, you can't speak for them when they don't comment, but usually the comments, if we don't receive comments we basically make the determination that they approve it as stated. So, I mean if you'd like to continue to get, I've tried to make personal, I've tried to make personal contact with Tom Hack, who's the air quality specialist because he usually gets you in touch with the right people at DEQ, to no avail to date, and I just started last week which probably was a little late but."

Chairman Reeder: "I think the issue here is, it is, since, if it was a scrap yard then there would be monitoring on the site that they don't have now, if it was a scrap yard, I think."

Tamra: "I don't know."

Chairman Reeder: "If you're breaking down cars and pulling engines and a, if you were running a scrap yard, salvage yard, wouldn't you have a different kind of DEQ involvement than, than just, a place just to park stuff and store?"

Tamra: "I think that issue, that is an experience that we've had with a scrap yard we permitted many years ago, ten years ago in Hermiston, so, but it wasn't until they went through the land use process, because prior to that time DEQ just looked at as, well it's a solid waste violation, there're not involved it's the county's responsibility so this brings them into the process. I have a suggestion, if, if the language was worded so that they obtain verification from DEQ for necessary permits. I don't know what those permits would be, except I do know that they need to contain motor fluids from."

JR: "Or, or just, or obtain verification of compliance with DEQ rules and regulations."

Chairman Reeder: "Which is, which is what I think you meant to say with what the words you've got, so you're saying either permits or verification that no permits are required."

Tamra: "Right, right, there might not be any permits required, but let DEQ decide."

Chairman Reeder: "Now the issue been raised though, that there's an oil sheen on the property and a ground water concern, so I'm wondering if there isn't some follow up that we need to incorporate relative to the, to the potential contaminates on the site?"

Tamra: "Well once, once they, we have to get something in writing from DEQ and if for example you were to permit all five of those lots as a pre-existing non-conforming contractor's scrap yard. DEQ would then treat it as a scrap yard, and continue to permit it as a scrap yard, with whatever on-going permits they may have."

Chairman Reeder: "You caught that? If, I'm a non-conforming use, that we okay as a scrap yard that would change the way DEQ is looking at it currently?"

Tamra: "Right, yea right."

Chairman Reeder: "And that would change the permit requirements probably."

Commissioner Kaminski: "Commissioner, there is evidence, even by their own testimony they take motors apart, and they put stuff back in, they cut apart trucks and things like that, so there's, I think, there's no question about that kind of activity. And the physical evidence, from those that have been on site, is that, in fact there is surface contamination, so there's no question about the fact that there is some oil, there are some fluids there, there of some concern, so I think, if, if you wanted to do that, to treat it as a scrap yard and hopefully bring in the requirements of DEQ has, maybe that would satisfy me."

Chairman Reeder: "Okay, my question is, is C adequate, to do that?"

Commissioner: "Well the language has to change a little bit."

Chairman Reeder: "If we okay, if one of the non-conforming uses we okay is scrap yard, and when they go to DEQ that's a, that's a use that's on the permit, they would have to be permitted according to that use, that their talking about. Which you, the office, can verify and ask questions about and so forth, so."

Commissioner Rhinhart: "But it's, but it's not really a scrap yard. Why are we talking scrap yard, it's a, well their equipment yard basically."

Commissioner Kaminski: "Well but they, they testified that they hauled away, how many tons? It, a huge amount of tons of stuff taken apart on that site and hauled away, how do you define that activity? 55 tons in a, a short period of time was it, do you know?"

"1500."

Commissioner Kaminski: "1500 tons, how, how do you define that kind of an activity, if it's not a scrap operation?"

Chairman Reeder: "It's a clean-up of 40 years of accumulation, probably. Because you don't, if I drive up to this lot with a load of, of a, scrap on my truck, you don't unload my scrap. So you're not receiving, buying and selling scrap, you have business off premises, the refuse business and whatever other businesses you have, and traditionally logging and all kinds of things that you've been doing. And equipment you're not currently using gets parked here, equipment that's been robbed for parts gets parked here and it's not operational, it's not licensed, but it's there for parts. And it falls into this gray area that we see all over the county. Where there's a, two old cars parked someplace and if you talk to the people, they don't have money to buy parts." End of tape.

The approved October 27, 2005, minutes include the following:

"After much discussion, it was agreed by the Commission and Mr. Humbert that the property should be given scrap yard and contractor's storage designation. Written verification would be required from DEQ confirming that the uses can continue.

The Planning Commission discussed the fact that tax lots 2200 and 2300 were zoned EFU at the time of purchase. The property was purchased with the intent of expanding storage, which is not an allowed use on EFU land and would require a zone change. It was decided that present operations be confined to the existing 3 lots. Staff was directed to strike the first sentence of Condition D, and strike the word accumulation from the last sentence.

Commissioner Shurtleff moved to accept Land Use Decision #LUD-012-05 in accordance with amendments made this date and accepting the 9 exhibits. Also accepting the findings as stated. Commissioner Colgan seconded. Motion carried unanimously."

The voting record shows unanimous approval by the Planning Commission members: John Standley, Rick Colgan, Gary Rhinhart, Frank Kaminski, Lonnie Shurtleff, Don Hornek and Clinton Reeder

The Planning Commission approved: a heavy equipment operations base (contractor storage) and scrap yard/salvage yard on Tax Lots 1901, 1903 and 1904. As stated in the adopted Planning Commission minutes. (Tax Lots 2200 and 2300 were not included in the approval.)

Subject: Re: Fwd: Humbert Property
From: Carol Johnson <carol@umatillacounty.net>
Date: 11/26/2013 1:46 PM
To: Tamra Mabbot <tamra@co.umatilla.or.us>

Hi Tamra,
Here's the recent timeline regarding the Humbert property:

November 6th:

Meet with Tom and Andy Shaw on uses allowed on the Humbert properties.

Discussed taking over Sam's operations of the refuse business, clean up of the scrap yard areas, operation of the Shaw's truck repair business, use of the EFU zoned parcels for secure storage yard associated not only with the truck repair business but also as a storage business for others' equipment, RVs, etc.

Shaws were told the truck repair business could not operate under the Humbert's verification of non-conforming use approval.

Discussed briefly the rezone process and what it may entail.

Shared a copy of the preliminary findings for the original Humbert rezone application.

November 15th:

Received email request from Stan Foster for a phone conference with planning regarding a call from Sam concerning sale of property to the Shaws.

November 18th:

AM Phone conference with Stan - mainly discussed possible limited rezone.

November 18th:

Email request from Sam, via Stan, for a letter or email indicating that the Shaws would be allowed to utilize the shop and two adjoining parcels in a "manner consistent with the current operations and approved non-conforming uses . . ." Stan did not ask if the Shaws could operate a truck repair business under the 2005 approval. [I was leery of writing a letter, and instead sent a copy of the 2005 approval.]

November 18th:

I sent the email with a scanned copy of the approved 2005 "verification of non-conforming use". Although, we stated to the Shaws that a truck repair business was not allowed under the 2005 approval to my knowledge it was never said directly to Stan that the Shaws truck repair business could not operate under the 2005 approval. I assumed that Stan understood that, and now looking back I can see that Stan not only wanted to please Sam, he just didn't understand the 2005 approval.

On a side note. Tom said in his recent phone conversation with me that it appeared that Sam never met all of the approval conditions listed in the 2005 Findings. He did not elaborate and I did not pursue.

I'm getting out late for lunch. Perhaps we can talk later today.
Carol

On 11/26/2013 12:26 PM, Tamra Mabbot wrote:

Hello Carol - My email was down for part of the morning. I'm heading out to the depot but should be back around 2:00. Something to think about. Is there any way Stan's interpretation is correct? Do you know if Stan has the entire document (the previous LUD)? Let's talk about this and then decide how to respond.

Tamra

On 11/26/2013 9:09 AM, Carol Johnson wrote:

Good morning Tamra,

Tom Shaw called and said he had received a message from Sam Humbert. Sam forwarded Tom an email from Stan Foster indicating that Stan believes the Shaws can operate their truck repair business on the Humbert property under the Humbert 2005 "verification of non-conforming use" approval. Tom recalled that this was not what he had heard when he and Andy sat down with us; and therefore, he forwarded (below) the email that Sam shared with him.

Tom would like planning to respond and either confirm (validate) they can operate a truck repair business on the Humbert property under the Humbert 2005 approval or clarify what actually is allowed under the approval.

I can respond with what planning believes was allowed, "heavy equipment operations base (contractor storage) and scrap yard/salvage yard" or basically the continuation of the refuse and scrap yard business, and explain that the 2005 approval did not allow all of the uses requested by the Humberts. In addition, the Humberts certainly could use their shop to service and repair their own trucks and equipment, used in the course of operating the refuse business and scrap yard; however, I believe there was no approval to operate a commercial truck repair business. Your thoughts?

Carol

----- Original Message -----

Subject: Humbert Property

Date: Mon, 25 Nov 2013 17:28:18 -0800

From: Tom Shaw <tshaw@bmi.net>

To: <carol@umatillacounty.net>

Carol,
Could you please validate for me this interpretation that Shaw Truck Works can operate as a Truck Repair business on Sam Humbert's tax lots 1901, 1903 & 1904 as indicated by Mr. Foster, Forgetting about any secured storage structures being built as we had discussed, just operating the truck repair business?

Tom Shaw

Sam:

This information from the county verifies that the shop and the two parcels behind the shop (north) are approved uses as they have been used. This would allow Mr. Shaw to operate on these three parcels with his truck repair business. So you can sell him the parcels without worries that he can not do what he needs to do, because he can certainly operate his truck repair business on these parcels. The other parcels (TL#2200 and 2300) are still going to take some heavy lifting and some money to get rezoned. My recommendation is to go ahead and sell 1901, 1903 and 1904 without doing any additional land-use work. If Mr Shaw wants to rezone this Rural Light Industrial (RLI), I believe that this can be accomplished, but would not really change anything so may be a total waste of his money. He can do whatever you have done in the past without any change, so why go through the hoops. The only reason for doing this would be to get 2200 and 2300 changed and placed under a RLI overlay zone which is not certain. So we can certainly come back to 2200 and 2300 if this is absolutely critical to the deal, but on your timeline, you can complete this without anymore involvement with the County Planning Department if Mr. Shaw simply wants to move his truck repair business to the site.

Let me know if you need anything more from me at this time. I believe that you got the information necessary for Mr Shaw to make the buy and continue to operate on the three main parcels without anymore expense to you or him.

Tamra Mabbott, Planning Director

Umatilla County Department of Land Use Planning
216 SE 4th ST | Pendleton, OR 97801
Phone: 541-278-6246 | Fax: 541-278-5480

<http://www.umatillacounty.net/planning> - Visit our website for copies of planning documents, permit applications and other helpful information.

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Carol Johnson, Senior Planner

Umatilla County Department of Land Use Planning
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Subject: Humbert property

From: Tamra Mabbott <tamra@co.umatilla.or.us>

Date: 11/27/2013 10:54 AM

To: tshaw@bmi.net, Stan Foster <stan@parcresources.com>

CC: cindy Humbert <humbertrefuse@qwestoffice.net>, Carol Johnson <carol@co.umatilla.or.us>, Richard Jennings <richardj@co.umatilla.or.us>

Hello Tom and Stan -

It seems that there are varying interpretations going around relative to the zoning and regulatory issues of Sam Humbert's property. Carol and I have spent some time talking about this and we would like to clarify the matters. I recognize this is important to Humbert's and Shaw's and this email will hopefully set the record straight so that you can make well-informed business decisions. If you have questions after you read our (staff) interpretation below, please give myself or Carol a call. If you would like to set up another appointment so we could all sit down together, we would also be happy to meet with you.

The 2005 approval of the Humbert "verification of non-conforming use" allows specific uses on Sam's property, heavy equipment and contractors storage yard and scrap metal business.

That 2005 Planning Commission decision is attached. I recommend that you read it, including the conditions of approval. An incidental use to the contractor's storage operation is use of the shop for equipment repair. That is not the same as the Shaw's truck repair business. Therefore, it is our interpretation that a new permit would be required before Shaw's could simply move in and set up their business.

The shop is located on Tax lot 1904, which is zoned Rural Retail Service Commercial (RRSC). The RRSC zone allows many different types of businesses. The Shaw's could apply for a permit to operate their truck repair business on this (tl 1904) 2.5 acre parcel. A link to our Development Code is below. The RRSC zone is in section 152.251. You can select the index on the top right and the select RRSC. I recommend that you look at that RRSC Zone to understand the types of uses allowed in that zone.

The adjoining parcels to the north, tax lots 1903 and 1901, are zoned (EFU) and uses on those parcels would be subject to the EFU zoning. The 2005 permit would allow only those specific uses identified, contractors yard and scrap metal. There are other conditions that apply to that permit as well, e.g. fencing. When Carol and I met with the Shaw's they talked about expanding their business, possibly for longer term truck storage, onto tax lots 1903 and 1901. That would require a rezone.

We hope this is helpful information. Again, our goal is to help you reach a desirable outcome, a win-win for all, but we are obligated to conform to the adopted zoning and process.



[http://www.co.umatilla.or.us/planning/pdf/Umatilla County Development Code Jan 2013.pdf](http://www.co.umatilla.or.us/planning/pdf/Umatilla%20County%20Development%20Code%20Jan%202013.pdf)

Have a Happy Thanksgiving. We will be back in the office after Thanksgiving.
Cordially, Tamra

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Tamra Mabbott, Planning Director

Umatilla County Department of Land Use Planning

216 SE 4th ST | Pendleton, OR 97801

Phone: 541-278-6246 | Fax: 541-278-5480

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Tamra Mabbott <tamra@co.umatilla.or.us>

— Attachments: —

Humbert 2005 Verification of Non-conforming Use.pdf

1.3 MB

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regarding Sam Humbert

1 message

missgloria131@gmail.com <missgloria131@gmail.com>

Sun, Nov 30, 2014 at 2:00 PM

To: "carol.johnson@umatillacounty.net" <carol.johnson@umatillacounty.net>

November 30, 2014

Sent from Windows Mail

Hi Carol,

My name is Gloria McMunn Williams. The Humbert property you are talking about was my fathers, John H McMunn. When we came here I was 13 years old and that property was 5 acres of corn field. Dad built that shop because we owned a logging company in Dayton Washinton, and he and my uncle Bob needed a shop to work on all the trucks and logging equipment. My father and my Uncle Bob McMunn divided the property . That is why it is zone different . My Dad kept on with a machine shop and wrecking yard and truck repair. If you look inside you will be able to tell it was built for real heavy equipment.

He sold this shop to Sam Humbert and moved on to hwy 11 across from the drive in . I have all the paper work. I have been developing the hwy 11 property and I have noticed all the changes from about 1958 to present. I am sure Sam is not aware of a lot of those changes. I also have no problem with what ever the Humberts wish to do. They are wonderful folks and are an asset to our community. I have known them all my life.

If I can be of any help please let me know.

Gloria McMunn Williams

(64)