DRAFT MINUTES
UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, July 19, 2012
6:30 p.m., Umatilla County Justice Center, Media Room
Pendleton, Oregon

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COMMISSIONERS PRESENT:	Randy Randall, Clinton Reeder, Gary Rhinhart, John Standley, David Lee, Tammie Williams, Frank Kaminski
ABSENT:	David Lynde, Don Wysocki
STAFF:	Tamra Mabbott, Richard Jennings, Gina Miller

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

CALL TO ORDER:

Chairman Randall called the meeting to order at 6:30 p.m. He read the opening statement, and called for abstentions or ex-parte contact.

NEW HEARING:

REQUEST FOR A PUBLIC HEARING was submitted by NORM KRALMAN of a CONDITIONAL USE PERMIT, #C-1200-12 application submitted by WALLA WALLA VALLEY ACADEMY. The Request for a Public Hearing was submitted during the 21-day comment period for the Conditional Use Permit. The Conditional Use Permit request is to establish a Church Camp which will replace the existing Church Camp (lodge, cabin) located on an adjacent property. The new facility will have a main lodge (capacity 75 persons), 2 cabins (capacity 28 persons each), a caretaker dwelling, parking (cars and buses), an amphitheater 11 RV sites, tent camping sites and a ball field. The new facility will be used by the Seventh Day Adventist Church. The criteria of approval for the Conditional Use Permit to establish a Church Camp are found in Section 152.172 (A), Section 152.615 and Section 152.616 (L).

Chairman Randall advised the Planning Commission that he would conduct the hearing but that he would recuse himself from the vote. His children attended school at Walla Walla Valley Academy.

Staff Report: Richard Jennings presented the staff report. He explained the application, and stated that during the public notice period, a request for a public hearing was submitted by Norm Kralman. He said that normally this type of application was handled administratively. Mr. Jennings explained the maps, photos, and other materials in the Planning Commission packet.

Mr. Jennings said that the zoning for the subject property of the application is Multiple Use Forest (MUF). The parcel is located off of Highway 204, east of Weston near Milepost 16. The land use of a church camp requires a Conditional Use Permit (CUP), and he read the criteria for approval. There is an existing church camp on Tax Lot 4700, and this application would establish a new camp on the larger Tax Lot 4800. There is currently a large lodge and 1 cabin on the existing camp, and parking was along Highway 204. The new application would be for a larger 4,300 square feet lodge to accommodate up to 75 people, 2 cabins, Recreational Vehicle (RV) sites, camp tent sites, amphitheater, ball field, off street parking and a caretaker dwelling. All of these features are displayed on the site plan in the packet. There will also be an easement improved to provide access to the southern parcel.

Mr. Jennings reviewed the criteria for approval on the application. Item (F) stated that there must be 1 parking space for every one hundred square feet of floor area, so they will need 44 parking spaces provided. Lighting for the property will require shielding to prevent glare to adjacent properties. Under Section 616 for church camps, they have to meet other specific criteria. The applicants will provide for off-street parking and two parking spots for buses. They already have secured an access permit from Oregon Department of Transportation (ODOT) for Highway 204. There is a 50 feet wide easement currently, which must be improved to the county P-1 standard as a condition of approval. The P-1 standard is a road width of at least 16 feet wide. Item #4 concerns fire standards to make the development as fire-resistant as possible. They will be required to remove all fuels from within 30 feet of structures, use fire retardant materials for construction and have metal roofs. Mr. Jennings reviewed the conditions of approval that are required for this application. During the preliminary review of the application, Mr. Jennings stated that he found that the applicant could meet the standards with the conditions of approval.

Commissioner Rhinhart asked if the older lodge would have to be removed. Mr. Jennings replied that there was no condition to decommission or remove it, so it could remain as is. It could potentially be used for spillover, and Mr. Jennings stated that the applicant could better answer that question when they had an opportunity to provide testimony. Commissioner Rhinhart asked how many other landowners had easements, and Mr. Jennings advised that there was only one easement. He said that the land owner had called him and had no concerns about this application.

Commissioner Standley asked about the septic system and water supply, and who would be monitoring these things. Mr. Jennings explained that a subsequent condition of approval was to obtain all required permits from state agencies that have jurisdiction over these things. The Department of Environmental Quality (DEQ) monitors the on-site septic system permitting, and Oregon Water Resources Department (OWRD) monitors the well and water supply. Mr. Jennings confirmed that a lagoon would not be required, based on the size of the proposed facility.

Applicant Testimony: Gale Norton and John Demming, Walla Walla Valley Academy. Mr. Norton stated that he spoke with the adjacent land owner who has the easement on their property for access. The school has not used the old lodge for 3 years. Commissioner Rhinhart asked what they intended to do with the old lodge. Mr. Norton replied that they will dismantle it and use what they can of the old materials in the new development. Commissioner Standley asked Mr. Norton to describe what their plan was for the camp. Mr. Norton discussed the history of the camp. The camp was built in 1952 with donated materials for the lodge. There was a spring a quarter mile away that supplied water for the camp. The camp has been used for the Pathfinders, a scout group through their church. The camp has also been used for church gatherings, private family camping, etc. The existing lodge sleeps up to 80 people. Their current bunk beds stack 3 people high, and they don't consider that very safe. Mr. Norton stated that they seek to restore the historic use of the property for church groups, youth groups, school groups and day camps.

Commissioner Standley asked if they intended to run the camp year round. Mr. Norton replied that it would most likely be Fridays through Sundays, with occasional week-long camps during the summertime. Mr. Norton displayed an artist's rendition of what their proposed structures will look like. The main lodge will be three stories, and will be handicapped accessible. Chairman Randall asked about their water source for the new camp. Mr. Norton replied that they have already drilled a new well, and the old well that went dry is capped off. Commissioner Rhinhart asked if they had talked to other state agencies, and Mr. Norton replied that they haven't yet until they get through this process first.

Public Testimony: Norm Kralman, 52151 Fruitvale Road Milton-Freewater. Mr. Kralman stated that this was his mailing address, but that he lived 1 mile west from the subject parcel. He stated that he had 2 letters from people that wanted to express a concern or opinion about the application. The first letter was from Leona Shumway, a neighbor to the west of the subject parcel. Mr. Kralman read the letter aloud to the Planning Commission. The next letter was from Terry Copeland, and Mr. Kralman read that letter aloud for the Planning Commission. Mr. Kralman displayed several photos of his property that is near the subject parcel. He explained his reasons for requesting the public hearing. He had surgery and had missed when the first land owner notice letter was mailed out. He felt that he needed more time and that was why he requested this public hearing. Mr. Kralman stated that he was not opposed to the improvements on the property, but he was opposed to the destination resort approach to serve a modest need on the mountain. Based on the questions that the Planning Commission had asked of the applicants, he did not feel that they really knew what they were doing. He discussed the question of what would be done with the old lodge and cabins after the new camp was built. Mr. Kralman didn't hear definitive answers from the applicants as to what they are planning. He stated that there could be a capacity of 200 people at the lodge, caretaker's facility, RV parking, and tent sites at any given time. Mr. Kralman asked if the well, producing 1.8 gallons/minute would be adequate to support this many people. The numbers don't add up for him, and this is why he questioned the application.

Mr. Kralman distributed copies of the two letters he read earlier to the Planning Commissioner and a copy of his testimony. He read aloud from his letter dated July 19, 2012 to the Planning Commission. Please note: this letter and copies of the other two letters read aloud are available for review in the #C-1200-12 file. He discussed property rights, and the siting standards for wind facilities in Umatilla County. He asked the county to apply the same scrutiny to this application that was applied to the wind farms. Mr. Kralman stated that he hoped that this decision would be based on reasonable conditions, and not simply because the county plan said a church camp could be built there. It should be the right thing to do for the academy, neighbors to the property and the environment. He stated that he had been a year-round resident on the mountain for nearly 20 years and has seen all types of new development come and go. New construction attracts people to the area, but when the newness goes away so do the people. Home sites turn over regularly in the area, being bought by new families all the time. Mr. Kralman discussed the difficult weather conditions for people living on the mountain and how snow was a large factor. He referred to some photos he had taken of past winters and the snow levels near the subject property and his property nearby. He asked if this camp would become a destination for winter campers as well. With the proposed development in the application, it would make it possible for year round occupancy. Mr. Kralman commented that he did not believe the Planning Commission could make a reasonable decision on the application based on the limited amount of information they had before them.

Mr. Jennings asked Mr. Kralman to explain which of the criterion he objected to. Mr. Kralman stated that he was neutral on the matter. He commented that safety was an issue, and it was not properly addressed in the public notice. The camp has the potential to be a year-round facility, but there was nothing written to deny the applicant/camp year-round operation. Mr. Jennings replied that there was not a criterion that stated the camp could not be operated year-round. Mr. Kralman displayed photos of the roads to demonstrate how much snow had to be displaced to make the roads passable and safe. During the winter months, the roads are congested with snowmobiler traffic and covered in ice, snow and fog. He suggested that people slowing down to turn into the camp access could cause an accident because of the narrowed roads due to snow being piled up. He said that this proposed camp was a safety hazard, and an accident or death waiting to happen. He suggested that there should be another lane on Highway 204 for turning into the camp because of the sharp corner near their access. Mr. Kralman displayed a map of the road and showed the sharp turns of the road near the camp access point, and snowmobile trails.

Commissioner Standley asked if snow mobile enthusiasts could go up to the property now and ride if they wanted to, and Mrs. Mabbott replied that was correct. Mr. Kralman asked if the county had any liability in this matter if some reasonable conditions were not required, and what was the reason behind requiring a conditional use permit. Commissioner Rhinhart stated that they understand his concerns about the issue of safety on the roads, and Chairman Randall said that ODOT had already granted an access permit to the application from Highway 204. Mr. Kralman stated that he was also

concerned about trespass issues. He also said he wanted to comment on wildlife concerns.

Chairman Randall asked Mr. Kralman to summarize his concerns and the Planning Commission would decide if his concerns were applicable to the criteria of the conditions. Mrs. Mabbott commented that the old facility provided no off-street parking, but the proposed facility has a large driveway and 44 spaces in the design that are off the highway. This may serve to address the safety issue. Commissioner Kaminski asked what the large building was that was on the opposite side of Highway 204. Mr. Norton replied that this was a home, but the owners possibly do not live there year round.

Mr. Kralman referred to his written statement and read aloud from pages 37, 38, 42 and 43. He discussed big game corridors as referenced by the Comprehensive Plan and the geography of the surrounding parcels. He talked about wildlife migration routes and how they would be affected by increased development and housing density. Mr. Kralman urged the Planning Commission to consider this information in their decision on the application. Chairman Randall explained that wildlife migration routes were not a part of the applicable criteria before them. Mr. Kralman asked why it wasn't brought up and why did that make it not applicable. Chairman Randall replied that they had to make their decision based on the current county code and they were not there to create new county code.

Public Testimony: Charlie Gillis, attorney representing Norm Kralman. Mr. Gillis read aloud his written statement. This written statement is available for review in the #C-1200-12 file. The statement summarized objections from his client, Mr. Kralman, to the application.

Public Testimony: Steve Corey, Box 218, Pendleton, Oregon. Mr. Corey stated that he was testifying as a citizen. His family has owned a cabin at Tollgate for 50 years, and prior to that their family owned a cabin at Blue Mountain Camp. He has observed the use of the subject parcel from both sides of the property, and stated that he was neutral on the matter. He served as chair of the ODOT Transportation Commission for 10 years, and said that if ODOT has issued an access permit, he does not see why the Planning Commission should oppose this development. He stated that the agreed with the proposed conditions as presented. Commissioner Lee asked about the narrowing roadway, and suggested that ODOT needed to look at a widened approach. Mr. Corey stated that the corner near the subject property has been widened and improved. He said that the proposed off-street parking will be a good safety improvement.

Applicant Rebuttal: Mr. Norton confirmed that ODOT has widened the approach for their property, so it was much safer than in past years. He stated that there will be no hunting on their property, so the wildlife will be safe there. Commissioner Lee asked if the facility will be gated when not in use. Mr. Norton stated that the road will be gated, and the neighbor that shares the road will have a key. Commissioner Standley suggested that the camp develop policies regarding hunting restrictions, ATV usage, fires in approved containers, adequate water storage for fire suppression, and trespassing onto

adjacent properties. He also asked if they had considered liability issues for the church to protect itself if a patron caused damage to adjacent land owner's property. Commissioner Standley stated that these measures could ensure that the applicant was accountable to make peace with surrounding land owners. Commissioner Williams objected to some of these suggestions as being too much regulation. She stated that other property owners can do these things on their properties without regulation, why should the applicant have to have these rules. Commissioner Reeder asked if this was considered a commercial use. Mrs. Mabbott explained that the church camp was an allowed use in the "Multiple Use Forest" zone and the property was not located in a Critical Winter Range overlay zone. Discussion followed on a private operation versus a commercial or public operation.

Commissioner Reeder commented that he wanted to address the responsibility of the institution to make certain that people using the proposed facility would respect surrounding landowners. He suggested that the applicant display their policies and guidelines on the walls for all to see. Mr. Norton stated that they have "no trespassing" signs on their property. Commissioner Reeder commented that this application represented a significant change in the use of the property, in terms of the scope and size of the facility. He would like to see the applicant foster a "gentleman's agreement" to self-police their campers to honor the property rights of the surrounding land owners and the wildlife issues that have been raised.

Commissioner Lee asked if the applicants had approached Mrs. Shumway. Mr. Norton replied that they had not contacted Mrs. Shumway because their property was located further down the mountain. Mrs. Mabbott advised that the Shumway property was not in the surrounding area where land owners received public notice of this application.

Public Agency testimony: none offered.

Chairman Randall closed the hearing and moved to deliberation.

Commissioner Standley commented that he would encourage the applicant to be a good neighbor by having rules and policies for the camp so that attendees exercised careful use of the property. Commissioner Rhinhart stated that Mr. Kralman presented some good points and that the Planning Commission should address these points. Chairman Randall replied that a portion of Mr. Kralman's testimony was not relevant to the criteria for approval that the Planning Commission was supposed to consider. Commissioner Kaminski commented that there was always the threat of fire on the mountain for all residents. Commissioner Rhinhart asked if the lodge would be available for public meetings, and Mr. Norton replied that it would be available. They want to keep the historical use of the property intact, and would continue to provide this service.

Commissioner Reeder suggested that the applicant report to the Planning Commission for the next three years to report on their progress, operating policies and activities. If there were no complaints received about the property, then this reporting requirement can be discontinued. Commissioner Williams commented that she believed the applicant had

met the criteria and could work through the remaining issues of water, fire and storage. She commended them for providing kids with an opportunity to experience the mountain that might never otherwise have this opportunity.

Mrs. Mabbott suggested that the Planning Commission could require a condition of an annual review to be conducted by staff, instead of reporting directly to the Planning Commission. Commissioner Reeder stated that he agreed with this recommendation, and this would give parties that are opposed to this application a reasonable process to file a complaint. Mrs. Mabbott stated that complaints that could not be mitigated by staff could be brought before the Planning Commission.

Commissioner Standley moved to approve #C-1200-12 and adopt the findings, with the addition of a subsequent condition of an annual review for the first three years. Commissioner Rhinhart seconded the motion. Motion carried 6:0 with 1 recusal.

Brief recess

APPROVAL OF MINUTES

Chairman Randall stated that there were two sets of minutes to be adopted. These minutes were from the May 24, 2012 and June 28, 2012 Planning Commission meetings. The minutes were adopted by consensus.

NEW HEARING:

Update of Umatilla County Development Code, #T-12-046. Amendment to Conditional Use Section 152.616 (HHH) of the Umatilla County Development Code and establishing standards for an adjustment to the two (2) mile setback between wind turbine tower and rural residences. Applicant is Umatilla County. Applicable Criteria are found in UCDC Section 152.750-152.755 Amendments. **The Planning Commission will make a recommendation to the Board of Commissioners, who will hold a public hearing on Thursday, August 16, 2012 at 1:30 p.m., in the Umatilla County Justice Center, 4700 NW Pioneer Place, Pendleton, OR 97801.**

Chairman Randall explained that the Planning Commission will be voting to make a recommendation to the Board of Commissioners. The Board will consider this application at a public hearing on August 16, 2012. He read the opening statement, and called for abstentions or ex-parte contact.

Staff Report: Mrs. Mabbott presented the staff report and introduced Land Use Attorney, Mike Robinson, who has been assisting staff with this process. She read from a memo dated July 15, 2012 that contained draft findings of fact that will enable the

Board to make the final adoption of these siting standards. She explained that this was pursuant to a Land Use Board of Appeals (LUBA) remand from the first set of siting standards that the county approved for commercial wind energy facilities. Mrs. Mabbott stated that Board Order 2012-020 remanded back to the Planning Commission this one specific piece to adopt standards for deviating from the two mile setback. She commented that both LUBA and the Board of Commissioners have affirmed the two mile setback, and the hearing tonight was to address one small part of Section 152.616 (HHH), to clarify the standard and process to the two-mile setback between a wind turbine and a rural residence. Mrs. Mabbott also referred to an April 6, 2012 memo to the May 4, 2012 subcommittee that met to try and reach a consensus between representatives of the wind industry, neighbors to wind projects, members of city government, and members of the Planning Commission. The last part of the packet was the section containing the actual proposed language. Mrs. Mabbott read through the specific language that would be considered at this hearing. She reminded the Planning Commission that the Board previously had adopted language recommended by the Planning Commission, including language that would allow a property owner to be closer than two miles from a wind turbine. LUBA remanded this back to the county, stating that the county could not defer this decision to a third party, such as a municipality, city government or land owner. LUBA did state that the county could adopt language with specific standards as an alternative. Mrs. Mabbott advised that the subcommittee that met on May 4, 2012 had reached a successful consensus on what this language could be, and that was the language before the Planning Commission at this hearing. She did state that one of the parties involved in the subcommittee had one small change they wanted to suggest for clarification. That party was present at the hearing and would be making a proposal.

Mike Robinson introduced himself and stated that he was representing Umatilla County in this matter. He advised that this was a legislative proceeding and an opportunity for the Planning Commission to listen to testimony and then vote to recommend the proposed language to the Board of Commissioners. The Planning Commission would also have to adopt the findings, if that was their decision.

Commissioner Standley asked what if a wind project was built and then 5 years later, an adjacent landowner decided to build a home that would put it only at a one mile setback. Chairman Randall explained that once the wind farm was built, that established the setbacks. Mrs. Mabbott clarified that the setbacks would be based on the time when an application was filed. Any homes built after the application for a wind project was filed would not be considered under this standard. Commissioner Reeder added that is why the language, “in good faith”, was included in the draft proposal for a dwelling. Mr. Robinson clarified that the subcommittee included language based on the definition of a rural residence. He said that Element Power had some suggested changes for this draft language. Mrs. Mabbott explained that if a wind developer were to submit an application for a commercial wind energy facility, they would also submit an application for an adjustment to the two mile setback for the rural residences that are in place at that time, or for an application to build a single family dwelling that had been submitted in good faith. This change to the setback will be called an adjustment to the standard, not a variance.

Commissioner Standley asked about the state noise standards. Mrs. Mabbott advised that the noise standards are not up for consideration at this hearing. Discussion followed on the state noise standards. Commissioner Reeder stated that a land owner can sign a noise easement and waive these standards if they choose to. Mrs. Mabbott stated that the proposed setback language from the county is apart from and in addition to the state noise standards. Commissioner Reeder stated that the state noise standards still trump other setbacks, unless the land owner signs a noise easement. Discussion followed on the decibel levels as defined in the state noise standards.

Mr. Robinson commented that one of the criteria's discussed at the May 4th work session was how to determine if the adjustment would not significantly detract from the livability of a rural residence. He stated that the proposed language did indicate that it satisfies the applicable Department of Environmental (DEQ) noise standards. He concluded that livability is not detracted from if the applicable DEQ noise standards are met. Mr. Robinson said that the applicant for the adjustment has the burden of proof to demonstrate that noise standards have been satisfied. Applicants should have noise studies performed to submit with an application for an adjustment.

Commissioner Reeder asked how the Energy Facility Siting Council (EFSC) will respond to the adjustment suggestion. He commented that it was unclear still how EFSC will handle the two mile setback if the two miles is beyond the noise limitations. If the state noise standards indicated a 1.5 mile setback, and the county has the 2 mile setback, was EFSC bound to abide by the 2 mile setback. He stated that if the project was being sited by EFSC, then the 2 mile setback standard would be irrelevant. Commissioner Reeder asked to verify that the rural residence definition assumed that if the land owner signed a contract with a developer, it would constitute a waiver and the residence would no longer be considered a "rural residence". Furthermore, signing a contract with a developer makes the land owner a participant with the wind project. Mrs. Mabbott clarified that LUBA determined that the county could not require a waiver from a resident. Commissioner Reeder commented that the definition of "rural residences" does not include residences within the project boundaries, and that the 2 mile setback does not apply to those residences. Discussion followed on how the setbacks would apply to different situations.

Mr. Robinson explained the definition of the "rural residences" from the proposed language of the adjustment section, and suggested that the term "waiver" not be used in this instance. He stated there is nothing being "waived". For the purposes of this section, rural residences in the application are not subject to the 2 mile setback standard. Mr. Robinson said that the reason LUBA remanded the ordinance back the last time was because the Board purported to delegate to private property owners the ability to make a decision on the adjustment. LUBA stated that the county could avoid delegation issues by providing for a variance process for the county to determine a lesser setback based on code variance standards, and this was the proposed language being considered at this hearing.

Commissioner Reeder stated that he hoped that everyone present would understand that if a property owner signed a contract with a wind developer, they would give up their right to the 2 mile setback protection. He commented that the setback standards gave the property owner the ability to negotiate with the developer. Discussion followed on negotiations between land owners and developers, and the different types of contracts that could potentially be signed between these parties. Commissioner Reeder noted that signing a waiver did not make a land owner a part of the project. He expressed concern for home owners who are on their own to negotiate with wind developers. He stated that if land owners understand the protection that was provided under this proposed language, then this process would work.

Public Testimony: Sara Parsons, Iberdrola Renewables. Ms. Parsons stated that her company was still very concerned that the 2 mile setback standard will deter wind development in Umatilla County, impacting economic development for the county. Their company does appreciate the time spent by the Board, Planning Commission and the public on this process. They support the adjustment language, but are confused by the "good faith" language. Ms. Parsons said that they have reviewed the suggested changes from Element Power and they would support these changes. Their main concern about the "good faith" language was that it presents an opportunity for land owners to buy property near a proposed wind project for the purposes of extorting funds from the developers, or to thwart the project entirely. They want more rigorous or objective standards for showing that the property owner really wanted to build a home on the subject property.

Public Testimony: Nicole Hughes, Element Power. Ms. Hughes distributed a handout to members of the Planning Commission. Upon reviewing the proposed draft language from the May 4th work session, she developed some revisions to clarify some areas of concern. She stated that she did not believe that these suggestions would alter the intended spirit of the changes discussed at the May 4th work session. Ms. Hughes said that she found some existing language in the current code under the replacement dwelling section (UCDC 152.058 (F) 1-5) that would clarify what was meant by a rural residence. She read aloud their proposed changes to the draft language for the Planning Commission. Ms. Hughes stated that their other main concern was finding a process for a land owner to secure their right to develop a rural residence and have the setback criteria applied to that proposed development. She said it was agreed at the May 4th work session that the setback would be applied based on a preliminary land use decision application being filed. Ms. Hughes spoke about concerns that the developers had with this standard. She stated that this would allow for some "gaming" of the system. A person could submit an application and cause the developer additional expense or potentially even kill a project. The developers want to know exactly what they need to design the setbacks to when they are submitting an application for a project, and who they need to get a waiver from. Ms. Hughes suggested that this be tied to a time in the land use review process where some administrative review of an application has taken place. This would enable the developers to know two critical things; where the dwelling will be located and does it meet the definition of a rural residence. The developers

would like to see this determination be tied to a preliminary land use decision being issued. Ms. Hughes confirmed that the preliminary land use decision was good for 4 years, and then they would have to get a building permit at some point. She said if someone were to submit an application the day before they submit their application, they would have no way of knowing of this potential residence. She commented that this revision would also take the burden off of the county to determine whether or not a "good faith" effort was made by the applicant for a rural residence. Even though she advocated for the "good faith" provision during the May 4th work session, it was a slippery slope and may lead to confusion and appeals from both sides. This can be remedied by tying it to a specific date in the review process, such as a preliminary land use decision being issued.

Commissioner Rhinhart stated that he was not willing to remove the "good faith" language, as he was not aware of any "gaming" being conducted in this county. He recommended that there be flexibility built in, because there are many people not aware of pending projects. He suggested that if wind developers wanted certainty to design the projects, they should announce a potential project two years ahead of an application to give land owners time to submit for development permits. Ms. Hughes replied that she was not trying to move the date out a great deal. She is just asking for some time for the county to review the application so they know where they have to implement setbacks. She stated that Mrs. Mabbott told her that this would take approximately six weeks from when the application was submitted. Commissioner Rhinhart stated that they were trying to protect the landowners, and want to maintain some flexibility in the process. Ms. Hughes asked for some direction so developers know what they will be establishing setbacks from. Commissioner Rhinhart suggested putting a notice in the paper prior to submitting their application so that property owners had an opportunity to advise the developers or the county of any pending development on their properties.

Commissioner Reeder pointed out that many properties are multi-generational, or passed down from family member to family member. Some generations don't necessarily know where or when someone else in their family will want to build a home. Ms. Hughes said that all they want was for the county to have six weeks to review the application. Commissioner Rhinhart replied that the wind developers work on a project for several years before submitting an application, and this should be plenty of time for them. Discussion followed on multi-generational families and their properties. Commissioner Reeder stated that developers trigger things when they come to town, and he doesn't want to stop the "good faith" prospect for multi-generational land owners. Ms. Hughes stated they just want to know how the administrative process will be handled.

Mr. Robinson commented that this was discussed at the May 4th work session on whether to go with an application date or an approval date, and it was decided then to include the "good faith" language so there was some test to the application. If the wind project applicant believes that an application was made to "game" the system, they would have the ability to include facts in their application that it was not a "good faith" application to develop a rural residence. The planning director could then determine if an application was made to "game" the system and if it would be subject to the setback standards for a

rural residence. Commissioner Lee commented that land owners are unable to submit an application to develop because they simply aren't aware of a wind project application being made. Mr. Robinson replied that this type of thing happens quite often. Ms. Hughes commented that their met towers have been there for 3 years, and that they are not being secretive. She agreed that they do keep the process of leasing land a secret, so that other developers do not get their land owners. If someone wanted to calculate out 2 miles from their met towers and decide to submit an application for a rural residence, then she would know where to plan her towers or who to approach for a waiver.

Commissioner Reeder asked to clarify the difference between placement of a new home and a replacement dwelling. Ms. Hughes replied that they are not defining these as two different types of dwellings; she was suggesting using the language found in the replacement dwelling section to define a rural residence for this adjustment section language. Commissioner Standley asked if they could use the tax assessor's records to establish what a dwelling was. Mr. Robinson replied that the assessor records often do not match the land use zoning definitions and should not be used for this purpose.

Mr. Robinson asked Ms. Hughes to clarify her earlier statement of only using #1-4 and not #5 of the replacement dwelling criteria, and she replied that #5 did not apply to this situation. He suggested the language, "containing the elements of #1-4" of the replacement dwelling section (UCDC 152.058). Ms. Hughes replied that she agreed with this suggestion. Commissioner Reeder asked for clarification on the difference between applying for a new dwelling and applying for a replacement dwelling. Mr. Robinson explained that there are two different tests; one for an existing structure and the proposed "good faith" language for a new dwelling. He further explained that what Ms. Hughes was asking for is a more clearly defined timeframe on the new dwelling application process that is pushed out a little further than it is currently. Ms. Hughes agreed and described how she would go about contacting the Planning Department while she was designing a project to find out if there were any pending applications in the area. Since it was very expensive to design a project, this would end up being an on-going process including regular contact with the Planning Department.

Commissioner Williams asked Mr. Robinson to restate what he had said earlier about taking away property rights. He replied that there had been discussion at the May 4th work session on whether to base a decision for a dwelling on the application date or the preliminary approval date. He explained that the work session participants had come to the consensus of using the application date with the qualifying language of "a good faith application". When a developer submits an application and feels that someone is "gaming the system", they can submit an argument that it was not a "good faith" application for a dwelling and therefore the developer does not have to apply the setback standards. The "good faith" language was designed to allow Planning staff to segregate the applications that truly have been made in good faith from property owners that have been planning their structure for some time as opposed to those that are submitting an application with a bad motive.

Ms. Hughes asked how the developers were supposed to determine if there was an application made that was not "in good faith". She stated that they would have to determine if the application was valid and complete, and has all required information been submitted. This would appear to be the same process that the county must go through to make a preliminary land use decision, and no one could determine this until they had the opportunity to review the application. This was why they were suggesting that the standard be moved to the preliminary land use decision stage, instead of the application date. Commissioner Reeder asked Ms. Hughes about some hypothetical situations that could arise from the multi-generational farms in the county and discussion followed.

Mr. Robinson stated that the suggested language did not require that the dwelling be built. The language just says "good faith application" and could also just say "application". The "good faith" language was suggested by the May 4th work session. The Planning Commission could also decide to go with the proposed language from the developers that states that the decision was based on an approval for a land use decision. The choice before them at this hearing was whether to choose the "good faith application" language proposed from the work session on May 4th, or to incorporate the additional changes proposed by the developers including a land use decision approval instead of an application date.

Public Testimony: Elaine Albrich, Stoel Rives. Ms. Albrich stated that they support the proposed language changes made by Element Power. They do not wish to undermine the work accomplished at the work session that was productive, but it was a very long day. She believes that they have a better resolution, and supports Mr. Robinson's suggestion of using the elements of the replacement dwelling to define a rural residence. She also encouraged the Planning Commission to consider the time period where there is an actual land use decision made.

Public Testimony: Richard Jolly, 54462 Upper Dry Creek Road, Weston, Oregon. Mr. Jolly stated that some land owners feel that the wind developers have already "gamed the system", and have not acted in good faith. He feels that the residents of this county have already lost many protections. He stated that there were many people at the May 4th work session that felt that the "good faith" language should not have been included, but the developers requested it to be in the proposed language. The developers now want to change other definitions of what constitutes a dwelling. Mr. Jolly would like to see the dwelling definition remain as originally proposed, and the "good faith" language removed. They support the application date as the line, the same as it is for a wind developer. Discussion followed on what constitutes a dwelling. Chairman Randall asked Mr. Jolly to summarize his comments, and Mr. Jolly replied that he supports removing the "good faith" language and keep the application date as the line. Commissioner Reeder asked to clarify that any rural residence applications that are submitted prior to a wind energy facility project application will be subject to the 2 mile setback standard, and Mr. Jolly agreed that is what he supported.

Mrs. Mabbott clarified that there was not a huge difference in timeframe between an application being submitted to when a preliminary land use decision was made. This process typically takes 6-8 weeks.

Public Testimony: Steve Corey, PO Box 218, Pendleton, Oregon. Mr. Corey stated that he was representing Cunningham Sheep Company as a board member for this hearing. As a tax paying land owner in the county, they have voiced concerns in the past over the 2 mile setback standards. It is public record that they have a project and where their land is located. He participated in the May 4th work session, and has concerns about the issues raised by Element Power and what to do about adjacent land owners where there was no dwelling. Mr. Corey asked how they could determine what a "good faith" application was, and what constitutes a structure eligible for a replacement dwelling. He stated that they do not favor the 2 mile setback, and feel that the EFSC standards are sufficient. He asked to re-submit a letter that he distributed at the May 4th work session into the record. Mr. Corey stated that he was concerned that this will be delegating to third parties again the decision what is going to happen with land. He stated that this language was back in the trap of not being legal. He said that if the work session could have had more time, they could have come up with a better solution. Mr. Corey stated that the language proposed by Element Power was not strong enough. He asked who was going to make the determination of what is or is not "good faith", and then what happens after that determination. Mr. Corey suggested that in addition to submitting an application for a rural residence, the applicant must also get their Zoning Permit approved. The Zoning Permit requires a site plan that pins down where future development will be, so the developers would know where they could place their turbines. Mr. Corey distributed his letter from the May 4th work session and a wind buffer map to the Planning Commission for the record. Mr. Robinson advised the Planning Commission that they had copies of all the documents submitted by Mr. Corey, and these will be part of the record going before the Board.

Public Agency Testimony: None offered.

Rebuttal Testimony: Mr. Robinson stated that the only thing he heard during testimony that concerned him was a point brought up by Mr. Corey regarding the requirement of a site plan with a Zoning Permit application. Mrs. Mabbott confirmed that a site plan was not a part of the initial land use decision application process, and that a Zoning Permit was the only application needed for a replacement dwelling application. He stated that since a Zoning Permit is administered in all cases and shows the exact location of the proposed dwelling, he would recommend using the Zoning Permit as the standard for the 2 mile setback. Based on the testimony at this hearing, using the Zoning Permit would provide an exact location and a timeline for both the county and the developer applicant. Mrs. Mabbott commented that if a prospective land owner submitted an application for a dwelling they would need to know where they intended to build, especially if it was a large, say 600 acre, parcel. Commissioner Rhinhart stated that there are always obvious areas on a parcel where a dwelling was more suited to be built, due to geography or utility access. He doesn't feel that it would be that difficult for a person to decide where they want to build a home on a parcel. Mrs. Mabbott

explained the land use decision process versus the Zoning Permit process, and what types of dwellings fell under each category. With a land use decision approval, the applicant/land owner has four years to apply for the Zoning Permit. A replacement dwelling only requires a Zoning Permit, and the replacement dwelling can go any place on the parcel. Mr. Robinson reminded the Planning Commission that the goal of the May 4th work session was to try and keep the language simple, and suggested the language, "or for which a Zoning Permit has been issued". This would satisfy the desire to make rural residences, both new and existing/replacement, subject to the 2 mile setback standard. He stated that this was a nice line, and there would be reasons to recommend this to the Board.

Commissioner Reeder asked about changing the location of the dwelling for the Zoning Permit, and Mrs. Mabbott explained that they would have to modify their Zoning Permit site plan to do this. Commissioner Reeder said that this still didn't solve Mr. Corey's problem, as he could build his home right on the property line and hold up the project. Mr. Robinson agreed, as long as he was meeting the setback standard or applies for an adjustment. Commissioner Reeder said that it didn't help with the timeline issue, but Chairman Randall said it solved the issue of "gaming the system". Mrs. Mabbott explained that if a Zoning Permit were issued to a property owner, followed by a wind energy project application being submitted, and the property owner changed the site plan later, the amended site plan would not be subject to the 2 mile setback standards. The original Zoning Permit site plan would be the only one to affect the wind project application.

Commissioner Williams asked about the other permits from Department of Environmental Quality (DEQ) and the State Building Code Division (BCD) building permit. Mrs. Mabbott explained the process in order of approval with land use always coming first before the other state agencies. Planning staff determines if the development requires a land use decision or just a Zoning Permit and then signs off on the other permit applications once land use approval is given. Commissioner Williams stated that she does understand the tidiness of using the Zoning Permit as the benchmark for the timing of the application, but she does not want to see the land owners give up any more than they already have to. She does not want to further restrict land owners or take away any options. Commissioner Randall said that the land owner could submit an application for $500 to protect their rights. Mrs. Mabbott clarified that Commissioner Williams wanted to give more deference to the land owners who would have to qualify for a farm dwelling for farm purposes with a very high bar, as opposed to an industrial development on farm ground. Commissioner Williams wants to protect farm use, including a farm dwelling on farm ground. Commissioner Randall stated that he understood and agreed with what Commissioner Williams was saying, but that he liked clean and tidy.

Mrs. Mabbott asked Ms. Hughes about the size of their proposed project, and Ms. Hughes replied that it would be anywhere from 130 megawatts to 350 megawatts. Mrs. Mabbott stated that they would be under the jurisdiction of EFSC standards, not the county where 105 megawatts was the threshold. Mrs. Mabbott suggested that a project being sited by

EFSC would file a Notice of Intent (NOI) and this process takes 6 months or longer. The NOI requires a public notice and this would give land owners time to consider filing their own application for development before the wind project application was filed. Commissioner Williams asked who was notified by the NOI, and Mrs. Mabbott responded that all land owners within 500 feet of the proposed project area would be notified. There was a loophole in the current application because land owners within 2 miles are not noticed. Ms. Parsons stated that a NOI was not required for every project sited by EFSC, and it was dependent on the megawatt threshold. Mrs. Mabbott confirmed that indeed not all EFSC jurisdiction projects file a NOI, for example Ms. Parsons project, aka Iberdrola's "Helix" project, was processed under the "expedited review" and therefore there was not an NOI submitted.

Commissioner Reeder stated that he was not against wind power, but he was against wind power developers abusing their neighbors. He hoped that this process would provide a mitigation process for affected land owners. EFSC setback standards provide no protection against property value loss, and he could demonstrate how this has already happened in this county. He has spent his life working with conflict resolution between public agencies, and he wants the developers to understand the hostility from the local community against them. Commissioner Reeder asked the developers to give affected land owners a legitimate right to be a victim. The land owners who receive windfalls from the wind projects as unearned income for tax purposes gain while the affected neighbors experience an undeserved burden and loss of property values.

Mrs. Mabbott suggested that someone put a motion on the table for the purposes of discussion, so they know what language they wanted to consider. Mr. Robinson suggested that the motion maker specify what language they wanted to change, and that the findings be amended if they change any language from the proposed draft.

Commissioner Standley asked about the work session held on May 4th, and wanted to know if there was a vote taken or a general consensus reached on the draft language being proposed. Mr. Corey replied that there was no vote taken, and it was his perception that there was not a general consensus from the group. Chairman Randall stated that he chaired that work session and he disagreed with Mr. Corey. He felt that a consensus had been achieved at that work session. He stated that he challenged the wind developers to come back to the table with language that would work for them, and after a brief break, the current draft language was suggested by one of the participating developers.

Chairman Randall closed the hearing and moved to deliberation.

Commissioner Standley asked if anyone had ever considered the scope of land owners that could potentially submit an application for a rural residence and if this would really be a huge issue. Chairman Randall said that he understood Mr. Corey's statement that the 2 mile setback would limit wind power development in this county, and that he was willing to accept that. There was a real concern that tipped over hunting shacks could cause some issues for developers. Commissioner Standley commented that the Planning

Commission was being asked to trade off land owner potential property rights to make it easier for wind developers. Discussion followed on how different structures are taxed differently and that the tax role cannot be used for land use decisions. Commissioner Standley asked for clarification on what their options were for this hearing. Commissioner Reeder discussed that all parties wanted certainty, and that was not possible. He felt that a consensus was reached at the work session, but the discussion was a long ways from being over and there are still issues to be resolved. Discussion followed on how the 2 mile setback was working. Commissioner Reeder suggested taking out the "good faith" language, and insert a definitive date to determine who submitted their application first to administer the 2 mile setback.

Mr. Robinson suggested that someone make a motion with proposed language to give the Planning Commission something focused to deliberate. He went on to say that after hearing testimony this evening, it was his opinion that the application date did not give enough certainty to either side. By adding the language "Zoning Permit has been issued", it would provide a bright line with a site plan and certainty on both sides. Commissioner Reeder suggested accepting the proposed language with the following changes; removing the "good faith" language and inserting "Zoning Permit has been issued". Mr. Robinson said that if the Zoning Permit language was used, the "good faith" language was no longer required as the Zoning Permit gave a specific date and location to the land owner and the wind developer. Commissioner Reeder stated that the Zoning Permit language minimizes the "gaming issue" that concerns the developers. Commissioner Williams asked if this meeting could be continued to talk more about this matter, as she was not comfortable with the revisions. Mr. Robinson advised that Commissioner Williams could make a motion to continue the hearing, or to approve the recommend the language before the Planning Commission as it stands. Discussion followed on how to proceed. Commissioner Williams believed that the proposed language was part of an agreement from all parties, and then she found out that there are two different sides. She was worried about taking more away from the land owners. Chairman Randall said that the Planning Commission was not the final word; it would be decided by the Board. He stated that if they didn't move forward with recommending this to the Board, then they would not protect land owners at all.

Commissioner Williams moved to accept the proposed language as is, with no changes, to be recommended to the Board of Commissioners, and to accept the findings that support this language. Commissioner Rhinhart seconded the motion.

Mrs. Mabbott advised that if this motion failed, they could make a different motion and vote on that. She clarified the motion that was before them. Chairman Randall asked about making this recommendation to the Board. Mrs. Mabbott confirmed that this was a significant policy decision and that the minutes of this hearing would be forwarded to the Board for their review. Commissioner Lee asked if the Zoning Permit language was included, and Mrs. Mabbott stated that this was not part of the motion on the table. She clarified that the motion on the table was the language found in their packets and the findings supporting the proposed language. Commissioner Standley called for the question. Commissioner Reeder asked if he could amend the motion. Mr. Robinson

advised that once the question, a privileged motion, has been called, the motion maker could not accept friendly amendments. The motion must be voted on as it was stated.

Reeder: NO
Rhinhart: YES
Willliams: YES
Standley: NO
Lee: NO
Kaminski: YES
Randall: NO
Motion failed 4-3.

Commissioner Reeder moved to accept the language as proposed but delete the language "in good faith". Mr. Robinson asked to clarify his motion by stating that the motion would adopt everything and amend the parenthetical to read, "for which an application has been submitted." Commissioner Reeder agreed that was correct. Mrs. Mabbott asked if Commissioner Reeder wanted to include the language suggested for a replacement dwelling. He replied no, as it was not in the original proposed language. Mrs. Mabbott commented that the replacement dwelling language would help bring clarity to the matter. Commissioner Reeder stated that the "good faith" language has been the focus of considerable discussion, and no one trusted the language in practice. The Planning Commission voted no on the original proposed language which included the "good faith" language, so that was why he was moving to delete that language in this new motion. He would be open to another motion following that. Mr. Robinson clarified that the language in front of the Planning Commission was not in the motion just made by Commissioner Reeder. He stated that the current motion in front of them now was the proposed language from the packet with the deletion of three words, "in good faith". Commissioner Lee asked about the Zoning Permit language, and Mrs. Mabbott advised that this was not included in the current motion. Chairman Randall commented that if someone were to submit an application, they would have 4 years to tie up the land developer because there was no Zoning Permit issued. Mr. Robinson suggested to Chairman Randall that he might want to ask for a second to the motion that had been made by Commissioner Reeder. Commissioner Reeder confirmed that he had made a motion that was identical to Commissioner William's first motion, except deleting "in good faith". He stated that he was open to another motion following this, pass or fail, which would further amend the language. He wanted to delete the most problematic language and see if they get a yes or no. Commissioner Standley seconded the motion. Commissioner Reeder stated that they could come back and reference language about the replacement dwellings. Mrs. Mabbott suggested it would be better to do this in one motion. Commissioner Williams stated that it was too late because the motion had been made and seconded. Commissioner Reeder stated that the more complicated that a motion was, the more apt it would be for someone to like one piece of it and not like another piece. All he is trying to do is get the "good faith" language removed. Mrs. Mabbott asked Commissioner Reeder if he was not making a motion on what to forward to the Board, but looking for a straw poll as to whether or not to include the "in good faith" language. Mr. Robinson stated that he thought he had heard a motion for the

Planning Commission to vote to adopt the language presented in the packet, with three words "in good faith" absent and make that recommendation to the Board. Commissioner Reeder stated that was what he had moved. Commissioner Standley stated that was the motion that he seconded. Chairman Randall called for the question.

Reeder: YES
Rhinhart: NO
Williams: YES
Standley: YES
Lee: YES
Kaminski: YES
Randall: NO
Motion passed 5-2.

Commissioner Reeder stated that the "good faith" language had been dealt with, and the next question was there anything else they want to do to modify the language in order to move it forward to the Board. Mr. Robinson stated that they had just voted to make a recommendation to the Board. Commissioner Reeder stated that he did not necessarily need that to end the process. Mrs. Mabbott stated that was why she had asked if his intent was to make a final motion or take a straw poll on those three words, and Commissioner Reeder chose to make a motion. He stated that he can live with that.

Chairman Randall adjourned the meeting at 10:21 pm.

Respectfully submitted,

Gina Miller
Secretary

(adopted by the Planning Commission on August 23, 2012)