

UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, August 23, 2012
6:30 p.m., Stafford Hansell Government Center
Hermiston, Oregon

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COMMISSIONERS

PRESENT: David Lynde, Clinton Reeder, John Standley, Don Wysocki, David Lee, Randy Randall.
ABSENT: Frank Kaminski, Gary Rhinhart, Tammie Williams.
STAFF: Tamra Mabbott, Connie Hendrickson.

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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 opened the hearing at 6:30 p.m. and read the opening statement. He called for abstentions or ex parte contact.

APPROVAL OF MINUTES:

Commissioner Reeder moved to approve the minutes from the July 19, 2012 Planning Commission hearing. Commissioner Lee seconded the motion. The minutes were approved by consensus.

NEW HEARING:

Text Amendment #T-12-047, to amend the 1972 Zoning Ordinance to allow certain uses in the F-1 Zone (Exclusive Farm Use) for the Hermiston Urban Growth Area. Applicant is Umatilla County. Applicable criteria are found in UCDC Section 152.750-152.755 Amendments.

Staff Report: Planning Director Tamra Mabbott gave the staff report. She noted that this was a Text Amendment to the 1972 Code. In several of the Urban Growth Boundaries the old County Code applies because some cities had their Comprehensive Plans and Zoning Ordinances adopted and acknowledged by the State before the Umatilla County Plan was acknowledged. When the cities went through the acknowledgment process with the State they referenced the Zoning Ordinance that was in effect at that time.

In the city of Hermiston the urbanizable lands, which include the FU-10 and the F-1 zones, are managed by the county. The city and county have an interest in some land that is adjacent to the proposed Eastern Oregon Trade and Event Center (EOTEC). The proposed amendment would allow roads and parking on that land. Those uses are typically allowed but because there could be some public expenditure involved the

Hermiston city council and the Board of Commissioners wanted the language to be very clear.

This amendment would affect the F-1 Zone in the Hermiston UGB only and not the rest of the county. The proposed text amendment and the development of the properties would not have a measurable impact on either the state or the county transportation plan due in part to the fact that when the City of Hermiston adopted an overlay zone for the EOTEC they also addressed the transportation planning rule and the city's Transportation Safety Plan (TSP).

Mrs. Mabbott referred to the Planning Commission packet stating that the proposed new language was printed in red. The language states that the amendment would allow parks, playgrounds, community centers and recreational vehicle parks owned and operated by a governmental agency or non-profit community organization (in the Hermiston Urban Growth Area only). She referred to a map of the area which showed the entire inventory of land zoned F-1 and drew attention to the green hatch marked areas which delineated the parcels that would be affected by the amendment. She said that Seth King from Perkins Coie was at the hearing on behalf of the City of Hermiston. He had been working in collaboration with staff and would be addressing the Planning Commission, as well.

John Standley asked if this amendment had to do with the expansion on the south side of Hermiston and Mrs. Mabbott confirmed that it did. She said this was a community effort. There is a proposal to develop the EOTEC which is on a property that is located inside the city limits. They referred to the maps to locate the property and discussion followed.

Commissioner Wysocki questioned the path of the boundaries on the map of the urban growth areas. Mrs. Mabbott said some land had been annexed and some had not. Commissioner Reeder said it was from the 1972 code and followed the land use pattern of the time.

Proponent Testimony: Seth King, Land Use Counsel for Perkins Coie, 1120 NW Couch Street, Tenth Floor, Portland, OR. Mr. King stated that the city supports the amendment as it has been drafted and concurs with staff recommendations and findings. He said there was no need for a traffic analysis because the city had completed a traffic study in adoption of the overlay zone and it was their belief that this procedure complied with the Joint Management Agreement (JMA) between the city and the county. He also said both the Oregon Department of Transportation (ODOT) and the Department of Land Conservation and Development (DLCD) received notice and neither agency submitted any written comments. He said the City of Hermiston supported the findings that staff had put forward and they supported this amendment. They were requesting that the Planning Commission approve this amendment as drafted and send a recommendation of approval to the Board of Commissioners.

Commissioner Standley asked if there were a public notice requirement for notifying property owners in this land use application. Mrs. Mabbott said that as it was a legislative text amendment and they had been required by law to publish that information in the

newspaper, which they had done. Since there was no reduction in the uses or potential for development in that area, there was no requirement to notify property owners.

Commissioner Reeder asked if the uses listed would have been permitted without the new language added. Mrs. Mabbott said it was by interpretation and not explicitly stated. Commissioner Reeder commented that this makes express something that was not clear before.

Commissioner Standley asked if there had been much discussion by the public regarding this process; was the public noticed at city council meetings or at staff level. Speaking on the county level, Mrs. Mabbott said that part of their packets included the Board order which was adopted at a public meeting directing staff to make the text amendment.

Mr. King answered that the city of Hermiston did not provide notice of this process because it was a county process. In terms of the general fairgrounds and event center process there has been a lot of notice and public hearings associated with that.

Commissioner Standley said he just wanted to be very clear that they were transparent about the public interest and wanted to be sure they were handling all of this the same way as if it were a private developer instead of a government entity.

Mr. King commented that the way the amendment is written, being limited to government agencies and non-profits, it reduces the number of land owners and applicants who are allowed to have the use outright. If it were opened up to private land owners also there would be a much greater impact in making this text amendment. In that regard the amendment language was crafted in a narrow manner in order to cause as little impact as possible.

Commissioner Standley referred to a conflict of interest form that commissioners must fill out annually. His concern was to make sure they were not doing this exclusively to benefit a governmental agency that they had been appointed to represent.

Mrs. Mabbott stated that a legislative proposal filed by a private party would be handled in the exact same manner as this had been handled. The same notice process, review process and the same standards would apply. There was no favoritism or bias shown.

Commissioner Standley said he had just wanted clarification about the process. Chairman Randall said he brought up a good point and now it is a part of the record and had been given consideration and discussed.

Commissioner Reeder questioned a part of the amendment that referenced a recreational vehicle park in the UGB. Mrs. Mabbott referred to the relevant sections of the 1972 code and said the new language regarding conditional uses does read the way it should. Discussion followed.

Mr. King said it was always valid to be concerned about making sure the public is aware and involved in the process and he would be taking the Planning Commissions' comments back to the city so they would know that the issue was raised at the hearing. He also wanted to be clear that the notice that was provided did comply with the legal requirements.

Commissioner Wysocki mentioned the traffic study that was done by the city of Hermiston and asked Mr. King if he knew the results of that study. Mr. King said the traffic study was done in conjunction with the overlay zone adoption and transportation planning rule analysis at that time. The study determined that none of the intersections would fall below acceptable levels. This means that all of the intersections would continue to operate at acceptable levels and none would become failing intersections.

Commissioner Lynde asked if there were a business center built in the future if it would have to go before the Planning Commission and Commissioner Randall said it would not because that area was inside the Hermiston city limits. Mrs. Mabbott said the way it is written, if a government entity built a parking area or RV facility or road it would be an outright use and would go through a design review and would not go before the Planning Commission.

Mr. King addressed a minor change that needed to be made on page 4 under the response to Goal 3 involving two paragraphs. This would not modify the purpose or intent but clarify that this amendment only applies to F-1 zoned properties within the city of Hermiston urban growth area and not to all F-1 zoned in Umatilla County. Currently those two paragraphs are not factually accurate so they had proposed some language that was provided to Mrs. Mabbott that clarifies that this amendment is specific to the Hermiston urban growth area.

Chairman Randall closed the hearing for deliberation at 7:03 p.m.

Commissioner Reeder moved to recommend to the Board of Commissioners the adoption of the proposed language and findings of facts and conclusions of the Legislative Text Amendment for the F-1 zone including a recommended modest change in the language to the findings relative to Goal 3 to make clear that the change to the land use applies only to the cross hatched areas of the F-1 zone in the Hermiston area and not for the total of the F-1 zones in Umatilla County.

Commissioner Lynde seconded the motion. It passed 6-0.

Other Business: Rick McArdle, Community Planning Liaison Officer to the U.S. Navy, 3730 N Charles Porter Ave., Oak Harbor, WA 98236. Mr. McArdle stated that he had a background in land use planning. He showed a Power Point presentation and gave an overview detailing the Navy's interest in the Boardman Airspace saying that it was vital to Navy flight training.

He said the Navy flight training mission in the Boardman area was primarily Airborne Electronic Attack (AEA) and he would address the requirements for that. The wind turbine challenge is the land use part of this presentation and he noted that the local communities play a vital role in protecting military airspace and the training mission. What is permitted on the land is governed by the local communities making it very important for the Navy to work closely with those communities to coordinate their mission with the land use authorities.

Mr. McArdle said the key issue is when wind energy development or any development project underlies the military airspace there is a chance of creating a significant flight safety hazard and a public safety hazard in putting incompatible land uses in areas where there are low flying aircraft. He stated that until two years ago the FAA (Federal Aviation Administration) reviewed and regulated projects that could possibly create a vertical obstruction or a hazard through their OE/AAA (Obstruction Evaluation/Airport Airspace Analysis) Process. In 2009 the FAA withdrew from their review of military airspace so they can no longer be relied upon by the Navy or a local agency to make the call of what is a hazard and what is not.

The Navy is trying to raise awareness of the flight safety hazard and promote compatibility between their training mission and the types of land uses that are envisioned in the comprehensive plan and zoning. They are trying to get earlier contact with developers and the local communities. They have had some good success when they have had early indications of wind farms or other projects and talked directly to the people involved. There were usually ways for potential problems to be worked out. If projects were well under way and time and money have been invested it is more difficult to undo them. Mr. McArdle showed a map and pointed out the major flight training routes in Washington and Oregon.

Commissioner Lee inquired as to the number of routes that had been altered due to wind turbine projects. Mr. McArdle stated that most of them had been altered to some extent. He referred to a map that showed an area where the wind projects were more numerous and the military routes that had historically been used were abandoned all together.

Commissioner Reeder asked if the turbulence from the turbines was a problem as well as their height. Mr. McArdle said it was primarily the physical obstruction. He referenced a map of the Boardman vicinity which showed the restricted airspace Area 5701, which was designated in the 1960's. What made this airspace unique was that it started at the surface not at 500 feet above ground level. For this reason it was important for training. This was where the Navy conducted virtually all of their low altitude training. There is about 250 square miles under the airspace, 30 square miles of which are in Umatilla County. The Navy owns 72 square miles and the rest is private property.

Commissioner Lee noted that according to the map which showed completed and proposed wind projects, some wind turbines had been constructed in the Navy's airspace. Mrs. Mabbott confirmed that was true.

Commissioner Wysocki asked at what height something was considered to be an obstruction. Mr. McArdle said pilots were not supposed to fly lower than 200 feet off the ground. The FAA requires that a pilot clear any structure by 500 feet vertically and horizontally. If there is a 100 foot transmission line the pilot would need to climb to 600 feet in order to clear it and then come back down. Technically, anything built above the ground should cause the pilots to change their altitude but the reality is that when an object is at about 100 feet is when it really becomes an issue. Houses and fences don't affect the training. A 500 foot tall wind turbine definitely does.

Commissioner Standley asked if Mr. McArdle was managing the cell tower operations as well. He answered that they have had a couple of cases where they had taken a hard look at cell towers and they had negotiated some relocation in order to keep a 270 foot cell tower closer to the perimeter of the airspace. Commissioner Standley said he was aware of another proposed tower in the area and would give that information to Mr. McArdle. Discussion followed.

Commissioner Reeder asked if the cell tower problems were with the transmission or the physical height. Mr. McArdle said there are areas where the electronic emissions do interfere with the training, either aircraft or other training but that was not the case here it is strictly a physical obstruction. The aircraft are flying very fast and very low it is all visual flight rules and they have to avoid collisions with things that get in the way whether it is a met tower or a spinning turbine blade. If the pilot comes on it too fast or cannot see it, it is a safety hazard.

Mr. McArdle defined the Airborne Electronic Attack (AEA) mission as the first element of defense for the Department of Defense (DOD). Naval Air Station, Whidbey Island and the Department of Navy provide virtually all of the airborne electronic attack capability for the Department of Defense. These are the first planes to fly in to open a safe electronic corridor for the attack aircraft that follow. They take out enemy air defenses and sand batteries, etc. They have sophisticated electronic equipment that can jam radar and take out those kinds of enemy assets. During the Vietnam era there were quite a few planes lost. This capability was developed as a result of that lesson learned. In the last 20 years there has not been an air attack that has not been led by assets like the AEA planes. About 75 percent of all of the Navy's Prowlers and Growlers (the AEA planes) are located at Naval Air Station, Whidbey Island. To perform that mission correctly you have to be able to fly extremely low, under the radar to avoid detection. In order to do that in combat the pilots need to train in that type of flying. It is demanding and dangerous. They fly at about 200 feet off the ground at 420 knots. It takes them 45 seconds to cover the 32 miles of the restricted airspace. Over 90 percent of the crews' time is focused on not hitting the ground when you are flying that low. The Boardman restricted airspace is the only place in the entire northwest or the whole west coast that is available for the type of training these pilots need. It has to be flat and free of obstructions. Replacing or relocating the training area would cost hundreds of millions of dollars.

Mr. McArdle said the basic issue was flight safety and the proliferation of wind turbine projects in this area. The state and local land use permitting processes are key as the

Navy is trying to make sure that people are aware and take into consideration this public safety/flight safety issue. It is also a national defense issue.

Commissioner Reeder asked if this was the only such training area in the United States. Mr. McArdle stated that it is the only one that is available on the west coast. There are restricted airspace areas in southern California but they are too far for planes from Whidbey Island to fly without having to stop to refuel. The pilots can fly from Whidbey Island to Boardman in about 20-25 minutes, complete their mission and fly back.

Chairman Randall asked about the placement of the coal fire plant that is in the Boardman area. Mr. McArdle said that at the time that was constructed, people were not paying attention to what was going on. If that were being built today there would need to be meetings with the people of Portland General Electric (PGE). The Navy has looked closely at the power plant that is going to be built next to it and the maximum height on that is 60-80 feet. The Navy is in contact with Idaho Power, PGE and Umatilla Electric and they all have projects going on. They are working with them to make sure there won't be serious incompatibilities.

Mr. McArdle said he had spoken with Mrs. Mabbott about the possibility of adding some language into the development standards for wind farms which would acknowledge air space concerns and public safety issues. Commissioner Reeder suggested that when Mr. McArdle drafted the language for the proposed changes he reference both wind turbines and transmission lines and that he keep the Planning Commission posted. Discussion followed.

Mrs. Mabbott said that Mr. McArdle has a good idea about changing the siting standards for wind energy. The other option would be for the Navy to apply for an overlay zone. Commissioner Reeder said it could be referred to as a vertical obstruction overlay zone.

Commissioner Lynde noted that the Navy was not on the list of agencies to contact when the Planning Commission was reviewing the Butter Creek project. Mrs. Mabbott said the Navy was not but the FAA was. The FAA had in the past noticed the Navy of projects with possible obstructions but they stopped. Because of that, some projects were permitted and constructed without the Navy's knowledge.

Mr. McArdle said the Navy had not done a good job historically of monitoring what was being constructed in that area. Until these types of projects started being built it was not a real issue. No one was paying attention until it became a problem.

Mrs. Mabbott said that when an applicant is applying for an overlay zone all the underlying property owners would be notified because it would be subject to ballot measure 56.

Commissioner Reeder stated that he considered the restricted airspace to be a national asset and should take precedence over a lot of other things. Mr. McArdle said the Navy is

not looking to prohibit anything they just want people to be aware of this issue and make sure whatever they do does not create a flight safety hazard. Discussion followed.

Chairman Randall called for a break at 8:03 p.m.

Other Business: Mrs. Mabbott brought to the hearing a DVD to view that gave examples of some rules and guidelines for Parliamentary Procedure and Roberts Rules of Order. She and members of the Planning Commission discussed points that would make the hearings run more efficiently and smoothly. She said the Planning Commission does a very good job; she just wanted to refresh all of their minds on procedures that would help to keep order and alleviate confusion during their meetings. When a hearing topic is contentious, it is especially important to have more formality and keep things in order. They can be approachable and accessible to the public but a little bit more formal. It is not appropriate to speak without being recognized by the chair. When sidebar conversations happen it sends a message to the public that you don't care what they think. Discussion followed.

Commissioner Reeder said how the meeting flows and how it is conducted sort of sets the stage for the extent to which the integrity of the process can be questioned. If it is too formal you end up getting distracted by the process and you can alienate an audience. If there is not enough structure it is possible to lose control of the meeting.

Commissioner Standley said that is why it is necessary to have a responsible person as the chair who understands how the meeting should function, will set the standard and control how the meeting is run.

Mrs. Mabbott said that no one had done anything wrong, she just thought it was a good idea to take a step back and look at the way a more structured process would work. She asked them to think about what role they would like for her and the other staff members to play. She gave an example of a previous hearing when a motion was made and she questioned as to whether they really wanted to make a motion or take a straw poll and rephrase the motion. She said that staff did not want to overstep their boundaries but did want to be helpful. Discussion followed.

Chairman Randall asked if at future hearings they would be able to limit individual testimony so the meeting was not unnecessarily prolonged. Mrs. Mabbott stated that they had in the past limited testimony at hearings with large audience participation but that in general putting a time limit on the testimony encumbered the speaker. The chair serves the role of facilitator and can caution the audience against repetitive testimony. It requires a certain finesse to get the message across that just as the Planning Commission respects the speakers time, so should the speaker respect the Commissioners' time. The testimony given should be germane to the requirements necessary to influence the decision to be made either in favor of or opposed to the application being presented. Discussion followed.

Mrs. Mabbott began showing the Parliamentary Procedure DVD at 8:34 p.m. The DVD was paused at 8:39 for comments from Commissioner Lynde. He referred to a previous meeting where there was a small quorum and one of the Commissioners had to recuse himself. He asked if it was correct that even if someone had to step away and there was no longer a quorum at the table yet because there had been a quorum to begin the meeting the remaining members' votes would be considered legal. Mrs. Mabbott referred to the Planning Commission by-laws which stated "A quorum shall consist of a simple majority of all the members of the commission and no action may be taken by the commission except by the affirmative vote of a majority of the quorum. If any member is incapacitated or refuses to participate in a decision, a quorum shall consist of a majority of the remaining members." Discussion followed. The DVD resumed play at 8:42 p.m. Mrs. Mabbott stopped the DVD again at 8:58 p.m. The remainder of the DVD will be viewed at another time.

There was discussion regarding making of motions during the hearing. Mrs. Mabbott stated that staff, at a Commissioner's request, could help to draft some language for a motion in order to help them. Discussion followed.

Commissioner Standley asked about the WKN transmission line. Mrs. Mabbott reported that the Land Use Board of Appeals (LUBA) found in favor of WKN and allowed their proposed transmission line to proceed. Commissioner Standley stated that he was unaware of that decision. Mrs. Mabbott said she would email that decision to him so he could read it.

Mrs. Mabbott reported that she had drafted a legislative proposal for transmission lines and she would circulate it to them. This concept, to her knowledge had not previously been explored. The public utility transmission lines go through a very rigorous process with the Public Utilities Commission (PUC) and their regulations; from the business decisions, construction, operation and maintenance of the lines. However, none of those regulations apply to the private transmission lines. Siting a transmission line on forest ground, Goal 4 ground, is much different on farm ground. On forest ground if the proponent for the transmission line is subject to ORS 772, which means you have the right of condemnation, you can only do that if you are providing service to a service territory or a regulated public utility. It is then limited to a 100 foot right of way. The transmission siting needs a legislative update but will probably get very political very quickly. Discussion followed.

Commissioner Reeder asked if the Helix Amendment had been decided on yet. Mrs. Mabbott said there was an Energy Facility Siting Council (EFSC) meeting tomorrow (8/24/12) in The Dalles and the matter would be decided at that time. Also Margi Hoffman, Energy Policy Advisor to the Governor, was making a presentation on the Governor's Ten Year Energy Plan. A presentation on the Wind Energy Health Impact Assessment from the Oregon Health Authority was also on the agenda. Discussion followed.

Commissioner Lynde moved that the meeting be adjourned. Commissioner Standley seconded the motion.

Chairman Randall adjourned the meeting at 9:31 p.m.

Respectfully submitted,

Connie Hendrickson
Administrative Assistant

(Approved by the Planning Commission 9/27/12)