

UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, February 26, 2015
6:30 p.m., Umatilla County Justice Center, Media Room
Pendleton, Oregon

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COMMISSIONERS

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

ABSENT: Tammie Williams, Suni Danforth, Cecil Thorne, John Standley.

STAFF: Tamra Mabbott, Carol Johnson, Shane Finck, Connie Hendrickson

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Chairman Randall called the meeting to order at 6:30 p.m. and read the opening statement.

New hearing: Chairman Randall identified the hearing as Conditional Use Request #C-1244-15, High Desert Marine, applicant. He called for any abstentions, bias, declarations of ex parte contact or objections to jurisdiction, there were none.

Staff report: Planning Director Tamra Mabbott stated that this conditional use request was to allow a park model RV to be used as a caretaker/night watchman dwelling. She reminded the Commissioners about the discussion at the hearing in January where they talked about allowing park model RV's as manufactured homes for caretaker dwellings in appropriately zoned areas but not as dwellings in residential zones.

Mrs. Mabbott stated that Roderick and Carolyn McKenzie have owned the High Desert Marine business since 1980 and have always had someone living in an RV/park model as a caretaker. Approximately one year ago the Code Enforcement department conducted a focused effort looking for code violations along the Hwy 395 corridor. The unpermitted caretaker dwelling on the High Desert Marine property was discovered at that time and the McKenzie's were informed that they needed a permit for mobile structure. Mr. McKenzie asked the occupant of the caretaker dwelling to move out until the structure was permitted. Mrs. Mabbott noted that from the time the caretaker left the premises the business has been vandalized and burglarized frequently giving the McKenzie's sufficient cause to request that a caretaker dwelling be permitted on the property. She added that she is recommending a park model RV as the caretaker dwelling. The use of that type of RV in the RSC (Retail Service Commercial) zone has not been addressed in the development code so staff chose to refer the request to the Planning Commission instead of processing it administratively. Commissioner Randall asked if approved, would the Conditional Use Permit follow the property if it was sold and Mrs. Mabbott confirmed that it would.

Applicant testimony: Roderick McKenzie, 32917 W. Walls Road, Hermiston, OR 97838. Mr. McKenzie stated that his family has owned the High Desert Marine business since 1980 and have consistently had a caretaker living on the premises until 7-8 months ago when the individual had to move out. Mr. McKenzie referred to copies of Police reports and insurance claims he filed when their business suffered losses. The dollar amounts of the losses start at \$3,500.00 and increase from there. He stressed that their business was in great need of having a caretaker on the premises to help prevent loss. He noted that they had fencing around most of the business property but that has not deterred the thefts.

Other testimony: Bernie Duffy, Oregon Department of Environmental Quality, 800 SE Emigrant, Ste. 330, Pendleton, OR. Mr. Duffy read an email he sent to Mrs. Mabbott regarding the caretaker dwelling for High Desert Marine noting that the connection to or installation of an on-site waste water treatment system must be approved by the Oregon Department of Environmental Quality. Mr. Duffy stated that he had not been able to find the records authorizing the connection of the existing park model RV to the existing on site system. There was some discussion of the possibility that the records may have been associated with an old tax lot. Mrs. Mabbott explained to the Planning Commission that tax lot numbers are subject to change as property is partitioned. Discussion followed.

Commissioner Randall asked Mr. McKenzie if he knew where the septic system for the property was located and if the system had been pumped in the last 30 years. Mr. McKenzie stated that the system was a concrete tank and he knew its' location but added that it had not been pumped because it gets very little use. Discussion followed. Mr. Duffy asked Mr. McKenzie if he knew where the drainfield was located. He answered that he did and would contact DEQ to discuss it with them.

There were no further public or agency comments. Chairman Randall closed the hearing and stated that he was in favor of approving the request for a caretaker/night watchman dwelling because it is essential to Mr. McKenzie's business for security purposes. Commissioner Wysocki asked if a manufactured home instead of a park model could be used as a caretaker dwelling in the future. Mrs. Mabbott stated that it could be permitted with a zoning permit without having to go through the Conditional Use Permit process again. Commissioner Rhinhart stated that he would rather all caretaker and hardship dwellings be park model RV's instead of manufactured homes in order to prevent the ones dwelling in them from becoming too comfortable and staying indefinitely.

Commissioner Rhinhart made a motion to approve #C-1244-15 with the conditions previously stated, adding the condition that DEQ approval must be granted for wastewater. Commissioner Marlatt seconded the motion and it passed 5:0.

New hearing: Chairman Randall reported to the Commissioners that he had a conversation with Senior Planner Carol Johnson regarding the next agenda items. There are two separate land use decisions before them but the applications are related so they would hear one staff report for both but decide each application separately. He opened

the hearing for #LUD-176-14 and #LUD-177-14. He called for any abstentions, bias, declarations of ex parte contact or objections to jurisdiction, there were none.

Staff report: Senior Planner Carol Johnson identified the applicant as NF Land, LLC. Sam Hobson is a member of the LLC and submitted the applications on behalf of the company. Mr. Hobson was unable to attend the hearing but retained the services of Attorney Patrick Gregg to speak on his behalf. Mrs. Johnson stated that the applicant is requesting approval of two non-farm dwelling applications on two separate parcels which are owned by NF Land, LLC. The parcels are located on the north side of the North Fork of the Walla Walla River Road. She referred to a map pointing out the parcels associated with the applications.

Mrs. Johnson informed the Commissioners that both non-farm dwelling requests fall into the administrative review process consisting of a public notice, 25 day comment period and an opportunity to request a hearing. During the comment period the planning department received comments from an adjacent vineyard owner, Oregon Water Resources Department and from Mr. Hobson, himself. These comments resulted in staff directing the application to the Planning Commission. She added that the applicant must satisfy the non-farm dwelling approval standards found in the Umatilla County Development Code 152.059 A, sections 8, 10 and 11. One of the standards requires that the activities associated with the dwelling will not force a significant change in existing farm practices on nearby lands. Additional justification was requested on satisfying the stability standard as to cumulative impacts from non-farm dwellings that may make it more difficult for farm uses in the area to continue. The applicant must also satisfy that the proposed non-farm dwellings are placed on land unsuitable for farming. She stated that attorney Patrick Gregg responded on behalf of Mr. Hobson and his written comments are in the Commissioners' packets.

Mrs. Johnson distributed a comment letter to the Commissioner's that was received earlier today from Marilyn Weissenfluh. Mrs. Weissenfluh owns land near the property owned by NF Land, LLC.

Mrs. Johnson told the Commissioners that their decision should be based on the actual body of evidence contained in the record which is used to support and formulate the final findings and conclusions for approval or denial of the land use decision. She added that non-farm dwelling applications are one of the more complex applications processed by the planning department. The body of case law influencing how the standards must be met continues to grow but there is also a certain amount of subjective interpretation.

Commissioner Rhinhart asked for clarification that the applications would only allow for two dwellings and Mrs. Johnson confirmed that was correct. Commissioner Rhinhart stated his concern was that NF Land, LLC had a permit for 15 wells. Mrs. Johnson commented that the map that accompanied the permit for the wells, shows other properties owned by NF Land that are further east from the properties involved with this land use request.

Commissioner Wysocki asked what relevance the wells had on the applications before them now. Mrs. Johnson stated the staff report findings said there were no irrigation water rights for the properties but Oregon Water Resources Department (OWRD) forwarded the map showing the potential wells and commented that there was a proposed final order for water rights. Commissioner Wysocki asked if there was a potential for irrigated water rights on the subject properties and Mrs. Johnson confirmed that there were. Commissioner Rhinhart commented that the irrigation water rights made the land high-value farmland even though it had class 7 soils. Mrs. Johnson stated that the type of soils on the properties do not provide a classification for irrigated land. Discussion followed.

Attorney testimony: Patrick Gregg, 222 S.E. Dorion, Pendleton, OR. Mr. Gregg reported that when Mr. Hobson initially applied for these two land use requests, he was applying also to Oregon Water Resources Department for the well permits but was told that it was not likely the permits would be granted. OWRD later issued the permits to NF Land while the non-farm dwelling land use requests were pending. Mr. Gregg stated that the availability of water rights was not listed in the code as a criterion for high-value farmland. The staff report indicates that the properties are class 7 soils which are presumed to be unsuitable for farming. Mr. Gregg clarified that the OWRD permits give Mr. Hobson the ability to attempt to develop the wells on the 500 acre parcel NF Land owns but does not necessarily mean the wells will be perfected. Commissioner Lee had earlier asked if a shallow aquifer study had been done. Mr. Gregg answered that there had not been a study done as it was speculative there was water on the property that could be developed into functioning wells. Commissioner Lee stated that he was concerned about the affect 15 wells would have on the shallow aquifer. Mr. Gregg stated that the Planning staff had approved non-farm dwellings for this area in the past. Mr. Gregg noted that if the non-farm dwellings were approved there would only be one well for each dwelling. Discussion followed.

Mr. Gregg noted that the concern stated in Mrs. Weissenfluh's letter was about non-farm dwelling occupants moving into the area and complaining about the existing farming practices. He responded to that concern saying that if the non-farm dwellings were approved one of the conditions would require Mr. Hobson to sign a Covenant Not to Sue based on farming practices. He added that Oregon has "right to farm" statutes in place which are designed to prevent someone from moving next to a farming operation and attempting to negatively impact that operation. Discussion followed.

Mr. Gregg addressed the request for additional comments regarding the stability standard. He commented that the county conducted a thorough analysis under the stability standard and found that standard was met. He referred to a letter from the Capri Vineyard stating that they have fenced in their vineyard to protect the grapes from being consumed by deer, etc. The gated easement that serves NF Land parcels runs through the vineyard and the vineyard owners are concerned that gates will be left open by people traveling to and from the non-farm dwellings, leaving the grapes unprotected. Mr. Gregg stated that placing gates across the road easement was a neighbor agreement between NF Land and

the vineyard owner so allowing a non-farm dwelling would not change the farming practices and should not be a reason to deny the requests.

Chairman Randall referred to a map from Oregon Water Resources Department. He commented that there appeared to be another access down lower on some of the other parcels and asked if the easement accessed all 500 acres of the property. Mrs. Johnson stated that it did not; there were other accesses to the east. Mr. Gregg added that there were alternate accesses to remaining parcels.

Commissioner Rhinhart stated that he was concerned about placing multiple non-farm dwellings making the area become like a housing development. Mr. Gregg replied that creating a housing development was not the goal for NF Land. Commissioner Lee asked how many dwellings NF Land planned to put on the remaining parcels. Mr. Gregg answered that Mr. Hobson did not have a plan with regard to the number of dwellings but that that would be a separate set of applications that could be approved or denied. He stated that adding more dwellings would potentially tip the stability standard at some point. Discussion followed.

Mrs. Mabbott commented that in November of 2012 she signed a Land Use Compatibility Statement for a water right application for Mr. Hobson. She noted that the use proposed at that time was farm use. She stated that she would not have signed that application if the use was residential because a residential well is exempt. Mrs. Mabbott added that as had been pointed out by Mr. Gregg, NF Land previously had a non-farm dwelling approved on a parcel but that permit expired. They have had several non-farm dwellings that were approved and are for sale. Mrs. Mabbott stated that there did seem to be a pattern but as Mr. Gregg pointed out, each application has to stand on its own.

She also added that NF Land applied for water rights in 2012 through OWRD saying that the water use was for a farm and asked her (Mrs. Mabbott) to sign the LUCS (Land Use Compatibility Statement) saying it was for a farm. Mrs. Mabbott noted that NF Land then applied for a non-farm dwelling so they are likely trying to make the most beneficial use of the land. She added that she did not see how the Planning Commission could approve the non-farm dwelling applications when the stated use was farm use; that means the developer believes there is some farm use value in the property. Commissioner Rhinhart agreed saying that without having more information he would vote not to approve the non-farm dwelling applications. Mr. Gregg commented that what took place in 2012 is not relevant to what Mr. Hobson is attempting to accomplish at this time. His clear intent right now is for two non-farm dwellings. He noted that he did understand the Commissioner's concern regarding the potential for too many dwellings that are not farm dwellings. Commissioner Rhinhart stated he was also concerned that Mr. Hobson would build the non-farm dwellings and then sell them with some acreage. Mrs. Mabbott stated that on December 19, 2014 OWRD issued a preliminary decision. She asked Mr. Gregg if he knew whether or not the applicant agreed to the decision or did he appeal it? Mr. Gregg stated that as far as he knew the applicant had not appealed the decision. He added that it was his understanding that it became a final decision earlier in the month of February. Mrs. Mabbott stated that in that case, the application for a water right for farm

use is dispositive unless Mr. Hobson wanted to revoke that application for water for farm use in lieu of the non-farm dwelling. Commissioner Lee stated that if the wells were not a factor in these applications they would look at them in a different light. Mr. Gregg stated that the wells also applied to the other remaining acreage on which Mr. Hobson is not seeking to place a non-farm dwelling. Commissioner Rhinhart commented that once a water right was given on a property it changed the character of the ground. Mr. Gregg noted that Mr. Hobson still must go through a series of steps to get the water right perfected. He added that the water rights issue in the context of this application goes to the question of suitability for farming. Discussion followed.

Commissioner Wysocki asked how long Land Use Decisions for non-farm dwellings are valid after they are approved. Mrs. Johnson answered that they were valid for four years with a possibility of a two year extension. The applications that were previously processed were handled administratively so were not brought before the Planning Commissioner. She added that NF Land was not the applicant for the previous non-farm dwelling applications. Discussion followed.

Agency testimony: Bernie Duffy, Department of Environmental Quality (DEQ), 800 SE Emigrant Ave., Suite 330, Pendleton, OR. Mr. Duffy stated that the subject property is steep and his concern was whether or not it would be suitable for on-site sewage disposal. There was discussion regarding how steep the ground was. Commissioner Lee stated that where the property line is closest to the river the ground is steep and the soil is shallow but further north the incline becomes more gradual and the soil is deeper. Discussion followed. Mr. Duffy commented that a site suitability evaluation should be done early in the process. Commissioner Wysocki stated that having the site suitability testing done is the responsibility of the land owner.

Attorney rebuttal: Mr. Gregg addressed the DEQ concern regarding the on-site suitability testing saying that the land owner would follow the applicable law and make sure all the requirements were met. He added that the Planning Commission could make the suitability testing a condition of approval for these land use requests.

Commissioner Lee asked if NF Land was going to withdraw the application for the wells until a later date and Mr. Gregg answered that he did not have the authority to speak to that and it was not a decision that was his to make. He added that he understood the Commissioners had concerns with regard to the wells but that was not a part of the criteria for the land use requests before them. Discussion followed.

Chairman Randall closed the hearing at 7:36 p.m. and deliberations began.

Chairman Randall commented that his perspective was that of a developer which is for the land owner to be able to use their property for its highest and best use. He stated that although he was not a farmer, he understood the concerns some of the Commissioners had about the water rights. He added that if the topic of the potential wells had not been introduced, these applications would just be non-farm dwellings and there would not be conflict. Commissioner Lee and Commissioner Rhinhart both expressed further concerns

regarding the potential wells and Chairman Randall commented that the issue of the wells and water rights was not part of the decision that was before them. Discussion followed.

Commissioner Marlatt asked how and when the smaller parcels occurred. Mrs. Johnson answered that when the 1972 code was in use, the parcels were a 19 acre minimum. Commissioner Marlatt asked Commissioner Lee if his assessment of the land was that it was not suitable at all for farming and he confirmed that it was not.

Mrs. Mabbott stated that when Mrs. Johnson originally wrote the findings for these land use requests and sent them out for public comment they had not yet learned about the potential water rights. At that time it appeared the land was unsuitable for farming. She stated that the Planning Commissions' decision must be based on one of the standards found on pages 9-10 in the packets. She pointed out the section that specified that a lot or parcel may not be suitable for certain types of farming but may be for other types of farming, and the section that asks if the dwelling would materially alter the stability of the overall land use in the area. She added that if multiple non-farm dwellings are added the area may look more like a rural residential area rather than an exclusive farm use area.

Chairman Randall stated that he was unfamiliar with the property and the topography of the area but with a 20 to 40% percent grade it does not seem like it would be usable for residential purposes. He added that the worst case scenario would be having a vineyard on the steeper portion of the parcel and dwellings to help support the vineyard on the area with more of a gentle slope. Mrs. Johnson stated that if a vineyard is developed and successfully run it will prove up through an income test as a farm related dwelling instead of a non-farm dwelling. That situation would not happen immediately because an income test relies on at least two years to satisfy the income or an average of three of the previous five years. Mrs. Mabbott added that it doesn't take many acres of vineyard to prove \$40,000.00 of income. Discussion followed.

Commissioner Wysocki asked if the previous non-farm dwelling land use requests were handled administratively because the soil is all Class 7 and Mrs. Mabbott confirmed that was correct. She added that the soil study was done in 1980 and did not include an irrigated class for that soil. Discussion followed.

Chairman Randall stated that he keeps going back to "the dwelling will not materially alter the stability of the overall land use of the area" and he does not believe that it will. Commissioner Rhinhart stated that he thought they should take in to account the possibility of the potential wells because it would change the classification of the soil and cause the parcel not to qualify for a non-farm dwelling. Mrs. Mabbott stated that the water right approval alone would not change the soil classification from Class 7. Discussion followed.

Chairman Randall asked if the applications were approved would NF Land Inc. be forced to give up their water rights and Mrs. Mabbott answered that they would not. She added

that the potential wells applied for would not be located on the parcels in the applications. Discussion followed regarding the area that could potentially have the wells.

Commissioner Rhinhart made a motion to deny land use request #LUD-176-14 based on the potential for development of 15 irrigation wells which would change the value and use of the property. The motion was seconded by Commissioner Marlatt. The motion failed 2:3.

Commissioner Rhinhart made a motion to deny #LUD-177-14 based on the potential for development of 15 irrigation wells which would change the value and use of the property. The motion was seconded by Commissioner Marlatt. The motion failed 2:3.

Commissioner Wysocki made a motion to approve #LUD-176-14 and #LUD-177-14 Commissioner Lee seconded the motion and it carried 3:2.

Other business: Planner Shane Finck referred to a discussion that occurred at the January 22, 2015 Planning Commission hearing. Commissioners Williams, Danforth and Standley had asked why a gate had been placed across the easement of Gateway Drive at Elder. Mr. Finck stated that when the parcels were divided the easement was laid out as a non-exclusive private easement over which the county has no jurisdiction. He referred to maps and aerial photos of the area saying that Elder was still a platted easement and was never vacated. Mrs. Mabbott added that since three Planning Commission members inquired about this road being closed off, staff did some research on it. She stated that the situation would be handled differently if it were being done today and hopefully land owners along that road will make some improvements in the future. Discussion followed.

Other business: Mrs. Mabbott informed the Commissioners that the East End Rod & Gun Club decision was remanded back to the county. She stated that the county is still trying to decide what to do. The decision showing that the property had been used as a gun club since 1993 was approved. The part that was remanded had to do with the possibility of expansion. That part of the request has not been addressed in our code. She added that there is currently a bill in the legislature that would allow gun clubs as a conditional use. Discussion followed.

Chairman Randall adjourned the meeting at 8:12 p.m.

Respectfully submitted,

Connie Hendrickson
Administrative Assistant

(Adopted by the Planning Commission on April 23, 2015)