

**MINUTES**  
**UMATILLA COUNTY PLANNING COMMISSION**  
**Meeting of Thursday, February 25, 2016**  
**6:30 p.m., Umatilla County Justice Center, Media Room**  
**Pendleton, Oregon**

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**COMMISSIONERS**

**PRESENT:** Vice Chair, Gary Rhinhart, David Lee, Suni Danforth, Don Marlatt, Don Wysocki, Tami Green, Cecil Thorne  
**ABSENT:** Chair, Randy Randall, Tammie Williams  
**STAFF:** Tamra Mabbott, Carol Johnson, Bob Waldher, Brandon Seitz, Tierney Dutcher

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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:**

Vice Chair Gary Rhinhart called the meeting to order at 6:30 p.m. and read the opening statement.

**MINUTES:**

Vice Chair Rhinhart asked the Planning Commission to review the minutes from January 28, 2016 and moved for adoption. Motion carried by consensus.

**CONTINUED HEARING:**

**REQUEST FOR A PUBLIC HEARING FOR CONDITIONAL USE REQUEST #C-1249-15, RODNEY J. RAINEY APPLICANT, KEVIN GRAY OWNER.** During the public comment period, a “Request for a Public Hearing” was submitted on September 30, 2015. The property is located on the north side of Diagonal Road (State Highway No. 207) on Tax Lot #2401, in Township 04N, Range 29E, Section 06A. The request is to develop a residential adult care facility for alcohol and drug treatment for up to 15 clients. The application is being processed as a Conditional Use Request for a convalescent home. The criteria of approval are found in the Umatilla County Development Code 152.616 (UU), 152.615 and 152.560.

Vice Chair Rhinhart called for declarations of ex-parte` contact, biases, conflicts of interest or abstentions from any member of the Planning Commission and there were none.

**Staff Report:** Brandon Seitz, Assistant Planner, presented the staff report. He stated that Conditional Use Permit #C-1249-15 is for a drug treatment facility for up to 15 patients and is being processed as a convalescent home. A Conditional Use Permit application was submitted on August 17, 2015 and deemed complete on September 4, 2015. A public notice was sent to surrounding property owners and public agencies on September 9, 2015. A request for public hearing was submitted by James Carmack on September 30, 2015 and the first hearing was held before the Planning Commission on December 17<sup>th</sup>, 2015. Due to issues raised by Mr. Carmack, as well as issues with the access easement and its location in relation to the property line, the applicant requested a continuance to allow for more time to resolve the issues. The three main issues needing to be addressed at this time are access, onsite septic and the well. Criteria of approval is found in County Code sections 152.616 (UU), 152.615 and 152.560.

Mr. Seitz referred to a picture projected on the screen and it was also included in the Planning Commission's packets. He pointed out that the applicant has widened the existing access road to provide access on their own side of the property line. The other pictures show additional improvements that have been made. The Planning Department received an email from Tom Lapp, Oregon Department of Transportation (ODOT), District 12 Permit Specialist, indicating that the improvements made to the access road meet ODOT standards. The Planning Department has received a copy of the receipt from Department of Environmental Quality (DEQ). They have started the process towards working on obtaining a new permit and updating the septic system. There are a couple options depending on the results of the soil survey and possibly a boundary line adjustment. Mr. Seitz has been in touch with Bill Goss, Oregon Health Authority (OHA), and was told some repairs and improvements will need to be made to the existing well, or a new well will need to be put in.

Staff recommends that some conditions of approval be added to the permit. The applicant would be required to obtain an onsite permit from the DEQ, or a water pollution control facility permit for the proposed facility and provide a copy to county planning. They would be also be expected to comply with all applicable requirements from OHA for state regulated water systems and provide verification of compliance to Umatilla County Planning. These conditions directly address the comments raised by DEQ and OHA.

**Applicant Testimony:** Kevin Gray, PO Box 928, Hermiston, OR. Mr. Gray stated that he did some work to improve several neighbors' driveways and removed a row of stumps for Mr. Carmack. He and Mr. Carmack have solved the driveway issue and have much better relations now. Regarding the DEQ issue and the well, he has discussed options with the Carmacks, including purchasing an acre of their property to put in a drain field. He is in the process of purchasing at least an acre from Mr. Carmack and possibly more with the intention to build a home. Mr. Carmack has signed the permission slips to dig the test holes for the septic system. Brady Rettkowski from Done-Rite Septic has finished digging 6 large test holes. Bernie Duffy, DEQ, finished the soil samples that day and reported that everything looks great and is on track to move forward. Mr. Rettkowski has a plan for the septic system and will move forward when he gets the

official approval from Mr. Duffy. They hope to have the septic completed in the next 30-45 days, weather permitting.

Regarding the well, the water was tested and meets standards. He hired Chad from Zollman's Larry Bird Well Drilling, LLC to camera the well and they pulled the pump out to check everything. They thought everything looked great. Erik Thomasser with Oregon Water Resources Department (OWRD) came out to review the site. Mr. Gray provided a DVD to Bill Goss, OHA, who reviewed the material and forwarded it to the geologist. The geologist and Mr. Thomasser discussed the project and decided to accept payment and move forward. They are expecting to get final approval tomorrow. He has been working hard to resolve neighborly issues and feels like this hearing was a blessing in disguise. The relationship is positive between neighbors moving forward.

**Applicant Testimony:** Rob Rainey, 19026 Couch St. Portland, OR. Mr. Rainey stated that they have a bid on another well as a backup plan, if they find issues with the current well. It would only take one day to drill, case and cement the well. If they have to do another well, they are prepared. If the property purchase with Mr. Carmack falls through they have discussed putting in a sand well and they have enough property to do that. He commended Mr. Gray for all the hard work he has put into resolving the issues presented at the first hearing.

**Applicant Testimony:** Melissa Homan, 32405 Diagonal Rd. Hermiston. Ms. Homan stated that Mr. Carmack made several accusations about the behavior of the clients in the last hearing. When she and Mr. Gray visited with Mr. Carmack after the hearing he said anything that was stolen off of his property was from a previous tenant, not their clients. Mr. Carmack toured the treatment facility, met with the clients, and seemed satisfied. Mr. Rainey said he and Mr. Carmack spoke about the possibility of something going wrong at the facility. After discussion, Mr. Carmack seemed to agree they are quieter and have less traffic than a family would. They have no night traffic and provide 24 hour surveillance. Ms. Homan noted that they have exchanged telephone numbers so they can address anything that may come up immediately.

**Neutral Testimony:** James & Jan Carmack, 32441 Diagonal Rd., Hermiston. Mr. Carmack stated that he and Mr. Gray have come to a personal agreement allowing him access to the road. In the future he may need to sell the property and the access with it, but for now they have come to a neighborly agreement. They are discussing Mr. Gray purchasing a portion of his property.

Commissioner Danforth moved to approve Conditional Use Permit #C-1249-15 with additional conditions set forth by planning staff. Commissioner Green seconded the motion. Motion passed 6:0.

**NEW HEARING:**  
**UPDATES OF THE UMATILLA COUNTY DEVELOPMENT CODE, #T-15-064.**  
**A summary of the updates include the following:**

1. Update UCDC 152.058 (F) (5) EFU and 152.083 (O) GF Replacement Dwelling
2. Modify UCDC 152.062 EFU Parcel Sizes to allow partitions of certain non-farm uses
3. Modify Kennel Definition UCDC 152.003
4. Modify Kennel UCDC 152.060 EFU & 152.085 GF Conditional Uses Permitted
5. Modify UCDC 152.058 EFU and UCDC 152.083 Uses allowed with a Zoning Permit to add Dog Training
6. Add Definition for Park Model Home UCDC 152.003
7. Modify UCDC 152.616 (X) Conditional Use Permits to add Park Model Homes as Accessory Dwellings
8. Modify UCDC 152.616 (VV) to include rural small and large Commercial Activities
9. Add Definition for Primary Processing of Forest Products UCDC 152.003
10. Add Temporary Primary Processing of Forest Products as Outright Use in GF Zone UCDC 152.081
11. Add Provisions in General Zoning Regulations Section UCDC 152.031
12. Add State Requirements on Property Line Adjustments for Measure 49 Waiver Properties UCDC 152.722
13. Modify Creation of EFU and GF Parcels UCDC 152.062 and 152.087
14. Add Land Division requirements allowing EFU and GF Zoned Parcels to be partitioned along an Urban Growth Boundary UCDC 152.710
15. Add Accessible Parking Requirement UCDC 152.562
16. Add Solar Projects as an EFU Conditional Use Permitted UCDC 152.060
17. Add Clarification to UCDC 152.616 (HHH) (6) Standards/Criteria of Approval for Commercial Wind Power Generation Facility Conditional Uses Permitted
18. Modify Property Line Adjustment Standards for Approval UCDC 152.722
19. Modify Permitting More Than One Principal Structure or Use UCDC 152.571
20. Modify Zoning Permit Exceptions for Small Structures UCDC 152.025
21. Clarify Residential Zone Setback Requirements UCDC 152.134, 152.159, 152.164, 152.173, 152.218 & 152.233
22. Modify EFU Land Use Decision Dwelling Approvals UCDC 152.059
23. Modify Canopy Definition UCDC 152.003
24. Modify Definitions of Zoning Permit and Development Permit UCDC 152.003
25. Modify Conditional Use Permits/Land Use Decision Procedure UCDC 152.612 & 152.613
26. Clarify Administrative Language UCDC 152.776 & 152.769
27. Clarify Decision Language and Final Approval Timeline UCDC 152.683, 152.685, 152.686, 152.669, 152.698 & 152.724
28. Update Numbering UCDC in Land Use Decision UCDC 152.617 (II) (7)

**Staff Report:** Carol Johnson, Senior Planner, presented the staff report. She stated that the code update is comprised of issues and suggestions the planning staff discovered in the code over the last year. The goal was to make it a better document as well as to comply with legislative updates and state law. The packet includes a summary for each proposed change for the Planning Commission's review. She included a PowerPoint presentation.

The first item Mrs. Johnson wanted to address was concerning the kennel code update, "#3, Modify Kennel Definition UCDC 152.003". Mr. David Hadley, Land Use Attorney, provided a comment letter after reviewing the proposed update. The letter is included in the Commissioners packets. Mr. Hadley was concerned about the definition of 'working dogs'. He suspected land owners will always consider their dogs to be working dogs, instead of obtaining a permit. Mrs. Johnson asked the Commissioners if they would like to better define the term. Vice Chair Rhinhart asked how this issue of working dogs came to light. Mrs. Johnson said the planning staff has been presented with situations where people are encouraged to obtain a permit for a kennel because they have more than 4 dogs, which is the maximum number allowed under the current definition. These people are frustrated because they feel they have working dogs which act as an integral part of their operation and should not have to be permitted for a kennel. Mrs. Tamra Mabbott, Planning Director, said there have been a few circumstances in the past when they have had conflicting issues. One situation included a land owner outside of Pilot Rock with 6 dogs he uses as working dogs. His neighbors did not like all the dogs and complained. The way the code is written today, he had more than 4 dogs and required a permit for a kennel, which staff was not able to issue on that piece of property. She noted that some of the larger ranches in the area have more than 4 dogs, and it's not uncommon for a single household to have more than 4 dogs. The intent of the new definition is to recognize that a working dog is part of a farming operation in EFU and GF zones and minimize subjectivity in the term.

Commissioner Marlatt stated that there is a definition of dog breeds for working dogs. Without a definition that says what their specific purpose is, one can say anything meets the standards of a working dog, even though they don't actually do anything on a farm or ranch. Mrs. Johnson stated that kennels are only allowed as a use in EFU and GF zone. The only other place a kennel is allowed as a use is in an Industrial zone, where it may be associated with a veterinary clinic or something of that nature. Rural Residential zoning does not allow a kennel as a use. Mrs. Mabbott said there is no option to get a Conditional Use Permit for a kennel if you are located in a Rural Residential zone and have more than 4 dogs. Commissioner Danforth said they need to consider uniformity in the language. For this purpose, the definition of kennel should have the word 'commercial' in it so they match and the definition offers more clarity. Mrs. Mabbott agreed and stated that the intent is to distinguish between a commercial kennel and an everyday kennel. Mrs. Johnson stated that this modification is from language that is new and taken from the Oregon Administrative Rules (OAR). The kennel definition we have had in our code currently has been used for a number of years. Mrs. Johnson said she modified the current kennel definition and added two new uses. She asked if it will make it clearer if they modify the term 'kennel' and replace with 'commercial dog

boarding kennel'. Commissioner Danforth agreed they need to be uniform across the definitions but didn't have a suggestion on how it should be worded. Mrs. Johnson agreed to change the definition to be uniform in wording.

Mrs. Johnson asked the Planning Commission to review the code update, "#11, Add Provisions in General Zoning Regulations Section UCDC 152.031". She asked if someone is knowingly misrepresenting themselves in a land use issue, should this be addressed. Commissioner Danforth asked how we would prove if they knowingly misrepresent themselves. Mrs. Johnson noted that we would only really find out after the fact. Commissioner Marlatt stated that it is probably not enforceable, but would likely encourage honesty. Commissioner Danforth stated she is aware of people who have testified in at Planning Commission hearings in the past and knowingly provided false information. Mrs. Johnson said it comes down to which set of facts you believe. Mrs. Mabbott said even if misleading facts are innocently presented, we approve what we approve based on the facts presented as truth. If the applicant does not comply with what they say they are going to do, it is always grounds for revoking the permit, depending on the severity. Mrs. Johnson said she thinks it is another tool that can be used in Code Enforcement. The question is whether to add the word 'knowingly' to the code. The Planning Commission agreed the original language is best.

Mrs. Johnson asked the Planning Commission to review the code language for update "#6, Add Definition for Park Model Home UCDC 152.003". She provided a definition for the Planning Commissions consideration, including the addition of a Park Model Home as an available use for a caretaker dwelling. The Planning Department approved such a dwelling this past year and it should be written in the code if we plan to use it that way. Vice Chair Rhinhart said he encourages the use as a caretaker dwelling as opposed to a mobile home. It is cheaper, smaller and easier to remove. Mrs. Johnson said in addition to allowing a Park Model Home as a caretaker dwelling, use of a Park Model Home as a temporary hardship home should be considered for the same reasons Vice Chair Rhinhart mentioned. She said Mr. Hadley suggested that the Park Model Homes should have a rotating date on them. This would serve to avoid the current situation we have with older manufactured homes, where as long as they are manufactured after 1976, or 1972 in some cases, they are still able to be placed on rural properties. Vice Chair Rhinhart said he disagrees with Mr. Hadley's suggestion. He would recommend 10 years, rather than 15 years. However, other Commissioners agreed with 15 years.

There was a discussion about Park Model Homes being used for longer term dwellings in other places across the United States. Commissioner Marlatt said he believes the code is fine as it's written. The Planning Commission agreed to move forward with presenting the issue to the Board of County Commissioners with 10 or 15 year options and have them make the final decision. Mrs. Mabbott stated that the original intent was to allow for a night watchman/caretaker in a Commercial zone. She asked the Commissioners if they intend to allow for use of a park model home as a medical hardship home in a residential area. Vice Chair Rhinhart said anywhere they permit a modular home they should also permit park model homes, strictly as a temporary solution for night watchman or medical hardship situation. Mrs. Johnson stated that a park model home is considered

by the state to be a recreational vehicle at this time. Mrs. Mabbott said it's difficult to get land owners to remove manufactured homes after the temporary hardship is over. They invest a lot of money in getting the home placed on the property and it costs quite a bit to get it removed. Park model homes are a more modest investment and encourage compliance with removal of the home.

Mrs. Johnson asked the Planning Commission if they had any other questions about the code updates. Commissioner Danforth had questions about code update "#16, Add Solar Projects as an EFU Conditional Use Permitted UCDC 152.060". She referred to OAR 660-033-0130(38)(a)(E), "...[P]hotovoltaic solar power generation facility is proposed to be developed on lands that contain a Goal 5 resource protected under the county's Comprehensive Plan, and the plan does not address conflicts between energy facility development and the resource, the applicant and the county, together with any state or federal agency responsible for protecting the resource or habitat supporting the resource, will cooperatively develop a specific resource management plan to mitigate potential development conflicts. If there is no program present to protect the listed Goal 5 resource(s) present in the local Comprehensive Plan or implementing ordinances and the applicant and the appropriate resource management agency(ies) cannot successfully agree on a cooperative resource management plan, the county is responsible for determining appropriate mitigation measures." She expressed concern for the bird migration in the area. The research she has done into solar projects shows they are vaporizing birds. Mike Denny, President of the Blue Mountain Audubon Society, has stated that we live in a migratory area, and he is an expert. The Audubon Society has recently completed a ten year study on raptors in the area, and the numbers show a decline. She suggested that we require applicants to overlay bird migration routes over maps of proposed project areas. If there is conflict with migration routes, we can have some mitigation measures. Commissioner Marlatt said photovoltaic energy does not harm birds. Directed energy uses a series of parabolic mirrors which direct the energy toward a source that boils water and generates energy through steam, and it is a different process. Solar panels simply collect sunlight without concentrating heat and do not use directed energy, and it is an entirely different category. Commissioner Danforth said she was confused about the type of solar panels used, and is pleased we are using solar panels that are safe for birds.

Commissioner Danforth asked to discuss code update "#17, Add Clarification to UCDC 152.616 (HHH) (6) Standards/Criteria of Approval for Commercial Wind Power Generation Facility Conditional Uses Permitted". She asked why transmission lines are subject to separate permits even though they are required to be submitted together for processing. Mrs. Johnson said there are different standards that apply. There is a Conditional Use Standard that is applied to the energy generating facility. The transmission falls under a separate set of guidelines and approval standards. In our code the transmission is found under the heading of a Land Use Decision. They are often tied together in one report and in one findings document and are processed together. In the past we have run into problems when they are reviewed separately. There have been instances when the state has allowed certain projects to move forward, one without the other. We saw a need to clarify and make certain that anyone who does business in

Umatilla County understands that we will process those together. Commissioner Danforth agrees with the update and wanted to be sure she understood it properly.

She asked if the Conditional Use Permit for a transmission line will ever expire if it not acted upon. Mrs. Johnson said our code states that there is a two year time limit to act on the permit. Commissioner Danforth pointed out a misspelled word under 152-003, as indicated, instead of as indicted. Mrs. Johnson agreed to make the correction.

Mrs. Johnson wanted to clarify that the Board of Commissioners hearing for the code update will be on March 16, 2016. She stated that the action that the Planning Commission will take is used as a recommendation to the Board of Commissioners. The Planning Commission moved forward the proposed code amendments to the Board of Commissioners with the changes discussed and the option of either 10 or 15 rotating years for the Park Model Homes.

Vice Chair Rhinhart asked if the Planning Commission had any other questions about the code updates. There were none. Commissioner Danforth made a motion to send the Updates to the Umatilla County Development Code, Text Amendment #T-15-064 with corrections and a recommendation of approval to the Board of County Commissioners. Commissioner Marlatt seconded the motion. Motion passed 6:0.

#### **OTHER BUSINESS:**

Vice Chair Rhinhart led a discussion about election of officers. He suggested they keep the Officers that same. The Planning Commission voted unanimously to keep the officers the same as before; Commissioner Randy Randall as Chair, and Commissioner Gary Rhinhart as Vice Chair.

Mrs. Mabbott commended the work of the Planning Commissioners in reviewing the Wheat Ridge Wind Project. She met with the developer, who said he was put to the test at the hearing. He recognized that Umatilla County correctly interpreted their code. He wants to be a good neighbor and is willing to submit a letter for the record that states if he moves forward with an alternative to put a transmission line in Umatilla County, he would be willing to forgo the use of condemnation.

Vice Chair Rhinhart asked Mr. Waldher, Senior Planner, for an update on the Boardman to Hemmingway transmission line project. Mr. Waldher announced that he and Mrs. Mabbott had a meeting with Carla McLane, Morrow County Planning Director and Jeff Maffucio, Project Manager for Idaho Power. Mr. Waldher noted that Idaho Power has met with many of the land owners along the Idaho Power Preferred Route; however, they are precluded from meeting with landowners along the "Umatilla South" route until the Agency Preferred Route is determined by the Bureau of Land Management. Mrs. Mabbott said we do not yet know what route they will choose as a final determination. The County continues to provide as much information to landowners that they are allowed but no final decision for a route has been made. Malheur County and Baker County recently made a recommendation for the "No-build" Alternative. The project has been ongoing for 8 years now and if it is approved, would likely be 6-7 years out before

Idaho Power commences construction.

Mrs. Johnson reminded the Planning Commission that the April Planning Commission hearing will be at the Stafford Hansell Government Center in Hermiston. There was a discussion about how we could possibly hold Planning Commission hearings at the Umatilla County Courthouse in Pendleton.

**ADJOURNMENT:**

Vice Chair Rhinhart adjourned the meeting at 8:10 p.m.

Respectfully submitted,

Tierney Dutcher  
Administrative Assistant

(Minutes adopted by the Planning Commission on \_\_\_\_\_)