

MINUTES
UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, February 23, 2017
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, Suni Danforth, Don Marlatt, Don Wysocki, Clive Kaiser, Cecil Thorne

ABSENT: Tammie Williams, Tami Green

STAFF: Tamra Mabbott, Carol Johnson, Bob Waldher, 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:

Chair Randall called the meeting to order at 6:31 p.m. and read the opening statement.

MINUTES:

Chair Randall asked the Planning Commission to review the minutes from January 26, 2017. Commissioner Rhinhart moved to adopt the minutes as written. The motion was seconded by Commissioner Danforth. Motion carried by consensus.

NEW HEARING

TEXT AMENDMENT #T-16-067, UMATILLA ELECTRIC COOPERATIVE, INC. (UEC) APPLICANT, OWNER. The applicant requests an exception from Statewide Planning Goal 3 to allow for solar development on approximately 80 acres (ac.) of property located within the Exclusive Farm Use (EFU) Zone. The Subject Property, owned by UEC, is described as Township 5N, Range 28E, Section 14; Tax Lot #1500. The criteria of approval are found in Oregon Revised Statute (ORS) 197.732 and Oregon Administrative Rules (OAR) Chapter 660, Division 4, OAR 660 033 0130(38)(f).

Chair Randall called for the Staff Report.

STAFF REPORT

Robert Waldher, Senior Planner, stated that the UEC application is for an exception of Statewide Planning Goal 3 to allow for solar development on approximately 80 ac. of EFU zoned property. The Subject Property is owned by UEC and located in Township 5N, Range 28E, Section 14; Tax Lot #1500 along Highway 730 near Umatilla.

Since the pre-application was submitted by Pacific Northwest Generating Cooperative (PNCG) in February of 2016, the project and application has gone through several iterations. Approval of the proposed Goal 3 Exception request would provide relief from the criteria found in OAR 660 033 0130(38)(f), which are the solar rules. This exception would allow the owner to advance

future siting of photovoltaic solar power generation facilities greater than 12 ac. on the subject property. Under the rules for solar on high-value farmland described at ORS 195.300(10), a photovoltaic solar power generation facility shall not preclude more than 12 ac. from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR Chapter 660 Division 4. The Planning Commission is asked to refer to the preliminary findings and conclusions and supporting information provided by the applicant, as well as testimony presented, to determine if the request meets the applicable criteria. The conclusions of the Planning Commission will be used for a recommendation to the Board of County Commissioners (BCC). Recommendations provided to the BCC must be based on substantial, factual evidence in the record, not conclusory statements.

Mr. Waldher noted that several additional materials were received since the packets had been prepared and distributed. He received a letter from Tom Lapp, ODOT District 12, Permit Specialist, stating that 1 rural highway approach has already been permitted on this property. There are no guarantees that the second approach would be approved. This would likely come into play if/when the applicant applies for a Conditional Use permit. It does not have an impact on the Goal 3 Exception request.

Mr. Waldher also received a letter from PacifiCorp. They stated that they have no objections to the Goal 3 Exception. They requested that UEC coordinate with PacifiCorp on any plans for future development. The county cannot impose that as a requirement, but it is good practice.

A letter was submitted by Oregon Water Resources Department (OWRD) which notes a non-cancelled 5 ac. water right located on the very southern portion of the proposed exception property. The staff report incorrectly states the property never had water rights, so Mr. Waldher wanted to make that clarification.

Commissioner Rhinhart asked if Oregon Department of Land Conservation and Development (DLDC) provided a comment. Mr. Waldher said they were provided a public notice 35 days in advance and we did not receive any response.

Commissioner Kaiser pointed out that there are 2 soil types present at the site; Type 1B and Type 93B and 80% of the land is covered by the Type 1B soils, which is a fine, sandy loam. The Umatilla Soil Survey classifies it as high-value land in terms of soil depth. Type 93B soil has an average depth of 18-20 inches before you hit the basalt. He pointed out that he doesn't see any exposed rocky surfaces on the land so he wants to know more about why it was identified as having rocky soils. He believes it has potential as agriculture land. Mr. Waldher agreed that it could be productive if there was water available to it. Commissioner Kaiser voiced concern that, although it does not currently have water rights, they could be transferred to the property, and new water rights in that region are likely to be made available. He asked if there is potential to use land with exposed rock for this kind of project. He believes the only limitation currently is the water, and the land should not be written off.

Commissioner Rhinhart stated that all the land in the area would be classified as high-value, even without water, under new rules that will be instated. Mr. Waldher stated that a large portion of Umatilla County is automatically classified as high-value because it's located in the Columbia Valley American Viticultural Area (AVA). That is why the applicant is requesting a Goal 3 Exception today.

Commissioner Danforth asked if approving the Goal 3 Exception would be precedent setting to other high-value farm ground within Umatilla County. Mrs. Mabbott stated that a Goal Exception decision is unique and granted under specific circumstances for a specific piece of property so it is more like a variance. The findings and criteria could be mimicked in a future application at another site, but it is a legislative act so it does not set a precedent. She added that a unique characteristic of this location is a transmission line that abuts the property as well as an existing solar array.

Mr. Waldher stated that the applicant is required to obtain a Conditional Use Permit (CUP) to develop future projects on the property. The decision tonight is only about the Goal 3 Exception and does not authorize any projects at this time.

APPLICANT TESTIMONY

Tommy Brooks, Cable Houston, 1001 SW Fifth Avenue, Suite #2000, Portland, Oregon, 97204, representing the applicant and Robert Echenrode, General Manager and CEO of UEC, 750 W Elm Avenue, Hermiston, OR 97838, applicant. Mr. Brooks commented that their request is not stating that this is not high-value farm land, or that it couldn't be used for farm use. This is an exception to the default, which states that is what it will be used for. There is no real precedent involved because the decision is based on this record and the Planning Commissions discretion on whether or not these reasons justify allowing the use. He reiterated that this is step 1, and any progress forward would involve additional permits.

Mr. Brooks stated that he felt the staff report was thorough and highlighted a number of things that needed to be clarified in the record. He would like to correct a statement in the findings that indicated the site was undeveloped. There is a 1 megawatt (MW) solar array already on the site which has provided data proving it will be good location for solar development. He stated that there are other policies at play and reasons to allow solar. He noted that they are obligated to abide by Statewide Goal 13, Energy Conservation. Staff pointed out that renewables are not incorporated into Goal 13, but the State's policy is to allocate the land and uses permitted on the land to minimize the depletion of non-renewable sources of energy. Goal 13 also encourages counties and other jurisdictions to have conservation plans that utilize renewable energy sources.

Mr. Brooks stated that in their findings they claim the property tax status indicates there would be a net benefit for the County going from farm deferral to a developed, industrial use. He said they misread the assessment and that was an erroneous description. In clarifying this, he pointed out that although it was not under farm deferral status, the property was not assessable in the past because it was owned by the Port of Umatilla and was not being taxed. Ultimately, the outcome would be the same, with a net gain to the County by changing the use.

Mr. Brooks stated that one of the requirements for seeking an exception is to consider whether or not non-exception sites can accommodate the use. Prior to the purchase of this property, UEC assessed a number of sites, including industrial sites. They took into account site configuration, solar resources, price, and proximity to existing transmission lines, among other things. This location would not require more transmission lines to be constructed on existing farmlands. In developing where we have already developed they are preserving farmlands instead of taking more out of production.

Mr. Echenrode stated that UEC is trying to grow into the solar solution for their membership and community. The State of Oregon mandates that UEC supply 25% of their power through renewable resources. UEC acquired this property with intentions of developing it over a period of time. By the time the mandate will affect the UEC, they anticipate they will be required to have nearly 1,000 MW of renewable resources to serve that obligation. They feel 100 MW of solar is the best direction for their member owned facility. If limited to the 12 ac. limitation due to the AVA, which covers a majority of their service territory, that would result in nearly 50 solar sites, transmission lines, connection lines, and substations needing to be developed. They are in the early stages and are analyzing the success of the sites. They hope when the mandate comes into play, this would allow for greater skills, better education and help them do what's best for their community and membership.

Mrs. Mabbott stated that, on average, it takes between 6-8 ac. to produce 1 MW of solar energy. Consolidating the solar projects at this location with proximity to existing transmission would eliminate the need for additional development. If they will eventually need 100 MW of energy, that's approximately 700 ac. needed for this use.

Commissioner Kaiser stated that solar panels are becoming more and more efficient. He asked if they have a plan to upgrade the existing units as those efficiencies improve. Mr. Echenrode said the project scope is based on the current technology and affordability. The panels have a life of 30-50 years and the project is scaled based on its efficiency over that period of time. If the price of non-renewable power or the price of panels drops significantly over time, which is a possibility, there could be a business case to replace those panes with more efficient models, thus decreasing the land needs. They want to do what is best and at the lowest cost for their members. Commissioner Kaiser stated that windmills have a clause that requires them to be removed when they have expired. He asked how they plan to handle the removal. Mr. Echenrode stated that, as a utility with local obligations to serve the membership, they take the greatest effort to maintain the resources they currently have. Mrs. Mabbott stated that the retirement issue would be best addressed in the future as part of a CUP.

Commissioner Rhinhart stated that he is concerned about the 5 ac. of irrigated ground within the tax lot. He asked if they would consider leaving the 5 ac. out of development. Mr. Echenrode said more than likely, yes. It would be the last acreage they would develop, as it is furthest from the resource. Commissioner Rhinhart said, as a farmer, he likes to see farm ground preserved and has a hard time justifying a non-farm use if the land has irrigation on it. Mrs. Mabbott stated that Oregon Water Resources Department (OWRD) described it as a "non-cancelled water right". She believes this means they probably wouldn't be able to exercise the water right since it has not been used in more than 5 years. Mr. Echenrode stated that, if the water right is transferrable to benefit another land owner they would be open to that. They were not aware of the water right until recently.

Commissioner Danforth asked how much renewable energy they currently have. Mr. Echenrode said, if you count the Bonneville Power Administration (BPA) hydro, they have a high percentage of renewable energy. Excluding hydro, they have a 1 MW and a 57 kilowatt (kW) solar array and own a share of a 5 MW biomass produced in Corvallis. From a percentage point, it would amount to approximately 1% because the State of Oregon does not recognize hydropower as renewable energy.

Commissioner Rhinhart asked when the farmland was last grazed. Mrs. Mabbott stated that she spoke with the previous owner, the Port of Umatilla. The General Manager told her he recalls sometime in the distance past it had been grazed but has not been used in that way recently. Commissioner Kaiser asked if the inference was that undeveloped land is unproductive. He referred to page 8 of the packet where it states that the subject property is undeveloped and viewed as unproductive. Mr. Brooks explained that they stated that because it currently is undeveloped and currently unproductive. Commissioner Kaiser said he agrees with the fact that it is undeveloped but he doesn't believe it is unproductive. Mr. Waldher stated that the County's findings stated that the subject property would not be productive without irrigation. Commissioner Kaiser asked that the record reflect that the property has potential, but is currently unproductive because there is no irrigation water.

OPPONENT TESTIMONY

Dave Price, Blue Mountain Alliance, 80488 Zerba Rd., Athena. Mr. Price stated that he is representing Blue Mountain Alliance on the issue of the Goal 3 Exception. He pointed out that the map shows a substantial part of the county is covered with the same AVA designation. He stated that water rights were not criteria in determining the designation when going through the DLDC process in the early 1980's. Since the designation was determined nothing has changed and would be the same today.

He stated that there was a lot of area in Hermiston that looked similar to this one and over time many were developed. He believes if a person wants to establish water for purpose of irrigation, all it takes is money. If they have the money and are willing to spend it they can get it. He stated that the question of whether or not it has water rights for irrigation is irrelevant. The classification or designation of EFU high-value farm land and the AVA objective was to preserve farmland. When the applicant purchased this land they were aware that this designation was in place.

The Blue Mountain Alliance is concerned anytime there is a discussion about depleting the resource of the high value EFU land and the AVA designation. Mr. Price stated that solar developers have been in the Athena-Weston area for some time now looking for land to lease for a solar project. He warned the Planning Commission that they will eventually find land to lease because they are offering a lot of money, and more hearings like this will come before the Planning Commission in the near future. He asked them to think about how they will handle these requests. Mr. Price stated that the findings talked about alternative sites available that would not require a Goal 3 Exception. He believes these alternative sites should be considered. He recognized the burden on UEC of meeting the renewable mandate, but they are talking about the need to expand in the future to meet that need, so there will be more applications like this in the future.

Commissioner Wysocki asked Mr. Price to provide some background on the Blue Mountain Alliance. Mr. Price stated that they are a resource issue group. They deal with many resource issues within Umatilla County including National Forest issues like the Forest Plan and the Columbia River Operations EIS. They have made attempts in the past to include hydro energy in the renewable resource category because they recognize the pressure it puts on those trying to comply. They are a 501c3 organization and got started because they were concerned about several land use issues within the county. They want to help in steering land management decisions.

APPLICANT REBUTTAL

Mr. Echenrode stated that this property, when fully developed, will only provide approximately 10 MW of the 100 MW needed. He acknowledges that they have a long way to go to achieve that mandate. This is their first attempt in learning the process and all the unique aspects so they can have a plan moving forward. They are trying to understand all the nuances involved with siting this solar project when it is not on industrial land or an outright use.

Mr. Brooks stated that the property does not have a history of farm use and is unlikely to go back to a productive use. He believes if they can concentrate their project onto fewer properties, they will have a smaller footprint in the farm zone. They are attempting to meet conflicting policies and Mr. Brooks believes that, on balance, this piece of property will serve more of those policies in a better way if it were developed into solar than it would be if it were left at the vacant status it had prior to their ownership. He encourages the Planning Commission to look at this as an opportunity. Their developer is a strong member of the community and is bringing to the table a broad outlook. If not developed by UEC, there may be individual developers who come in and want to make big money on a growing industry and don't need to ask for the same level of permission because they are seeking smaller projects scattered around the county. UEC represents a large part of the community with its membership and is able to propose something that works for everybody.

Commissioner Wsocki asked about what kind of infrastructural development is needed to link these solar panels to the grid. Mr. Echenrode stated that there is an existing high capacity underground distribution line that goes from the power line adjacent to Highway 730 on the south side of the Highway. This is on the property that currently develops 1 MW and it can handle approximately half of the full sites potential. They would need to develop another link, but not attached to the power line. They would use a sector or junction can like you see in residential neighborhoods with a long green box. They would run a cable off of that junction box and go further south on the property to pick up the second or third phase when that occurs. There would be no new transmission lines built.

Commissioner Rhinhart asked if they will raise rates on UEC membership to pay for the cost of this project. Mr. Echenrode said the membership is responsible for providing the equity, through rates or borrowing and paying off through rates. Commissioner Rhinhart stated that it would make sense to be the developer and runner of the project because they would qualify for federal programs or money back that would benefit the UEC membership. Mr. Echenrode stated that there are incentives for the program. UEC received some renewable energy bonds that offer subsidized interest rates in development of the 1 MW solar project. They hope to explore and use those rates, as they are not guaranteed forever.

Commissioner Danforth asked for more information about the bird study. She stated that page 36-37 of the packet shows a study that is not complete. She believes it is not an accurate reflection of the possibilities on that property. She recommends that, in future applications, UEC should conduct a full annual study so there is a true picture of wildlife and potential wildlife that will be impacted. Mrs. Mabbott stated that would be leading advice for UEC to do a more thorough analysis of the site as they develop in phases. Commissioner Danforth stated that it should be considered in making the Goal 3 Exception not just the CUP that comes after. She believes that, in making an exception we are changing legislation and all the information should be available to make that decision.

Commissioner Danforth pointed out that the findings from the county note that there was no inventory done. However, the paperwork distributed at the hearing says there was an inventory done, but there is nothing to back that up. She believes that is necessary information to provide in order to make an informed decision in taking high-value farmland out of production or possible future productions.

Chair Randall closed the hearing for deliberation.

Chair Randall stated that the fact that it runs along the highway and the BPA transmission line runs through it, it makes common sense to him. He doesn't feel this should be precedent setting but cringes at the fact of needing to install new transmission lines for 80-100 new sites. A BPA power line runs across this piece of ground and this particular exception makes sense to him. Chair Randall stated that he has lived on that end of the county for the last 25 years and has seen what has happened to that area over the years. This piece of property makes sense to be used in this way.

Commissioner Marlatt agreed with Chair Randall. He believes the cost of developing the property for solar power will be far less than if it were somewhere else. Commissioner Marlatt agrees that it wouldn't set precedence if approved, but worries that it may be an indicator to other developers that Umatilla County is willing to look at more development on high-value farmland. He believes that the 5 ac. water right can likely be claimed. Chair Randall stated that if the water right can be sold and put to good use then that should be considered in the upcoming phases of the project. Commissioner Wysocki stated that all Goal Exception applications should be judged on their individual merit; decisions are not precedents and have no bearing on future applications.

Commissioner Thorne stated that it's better to use this land that is close to transmission lines and has not been used for many years, than it would be to use someone else's farm ground which would require additional transmission lines to reach a service road.

Commissioner Kaiser stated that, if approved, he would like them to come back for a CUP and conditions are looked at very carefully. Mrs. Mabbott said, by code, a CUP would not automatically go before the Planning Commission, but if the Planning Commission is making that request she can make sure that happens.

Commissioner Rhinhart stated that he struggles anytime we lose farm ground. He believes, when changes are made to open space, it never goes back. Oregon loses 150,000 ac. per year to development and most of that development is in the western part of the state where they have excellent high-value farm ground. He believes at some point this piece of ground could be very valuable. He commends the UEC for attempting to find a location where the project would do the least amount of damage to farm ground but he continues to struggle with the decision.

Commissioner Wysocki moved to recommend approval of Text Amendment #T-16-067 to the Umatilla Board of County Commissioners. Commissioner Thorne seconded the motion. The motion was denied by a vote of 4 to 3.

OTHER BUSINESS:

Cities Urban Growth Areas (UGAs)

Mrs. Mabbott reviewed a spreadsheet outlining the Joint Management Agreements and Transportation Plans we have adopted with Cities to manage UGAs.

Mileage Reimbursement

Mrs. Mabbott spoke about the County's budget situation and the need to make cuts and decrease spending wherever possible. The County has issued a hiring freeze and asked departments to cease all spending that is not absolutely necessary. They hope to carry funds over for the next fiscal year. Several departments have submitted proposals to reduce our budget request but we are still about \$700,000 short of balancing the budget. When Julie Alford retires from the Land Use Planning office, we will not be replacing her. We also plan to cut some Code Enforcement hours. Mrs. Mabbott asked if the Planning Commissioners would be open to forgoing the reimbursement for mileage to and from Planning Commission hearings. Chair Randall stated that as a business person, he feels that the County administrative cost of preparing the reimbursement check is three times the amount of the actual check. Commissioner Danforth agreed that it is a waste of County resources and as a group they decided to forfeit the mileage reimbursement.

State Agency Coordination PowerPoint

Mrs. Mabbott presented her PowerPoint presentation on the State Agency Coordination (SAC) Program. She explained that, when the state adopts rules or programs that affect land use, they ask local government for input. This process works the same way when local departments reach out to the state and others agencies to provide input on decisions we are making. This process functions well with some agencies and not so well with others. In the past each agency had a designated land use person who coordinated with us on land use issues. Now, we send those notices to the agency in general, or to whoever we believe may be the person to notice within the agency. The institutional memory and need for that position has gone away so the funding has gone away and as a result, there is no identified person to coordinate with.

Mrs. Mabbott made some suggestions for Planners including obtaining a copy of SAC's and refer to them when coordination issues arise. She encourages them to be proactive and keep an updated local agency notice list with regional representative names and contact information. Eventually we hope to have additional legislation with funding available to update the SAC program.

ADJOURNMENT:

Chair Randall adjourned the meeting at 9:05 p.m.

Respectfully submitted,

Tierney Dutcher
Administrative Assistant