

**MINUTES**  
**UMATILLA COUNTY PLANNING COMMISSION**  
**Meeting of Thursday, June 23, 2022, 6:30pm**  
**VIRTUAL HEARING**

## **COMMISSIONERS**

PRESENT

Suni Danforth, Chair, Don Wysocki, Vice Chair, Tammie Williams, Tami Green, Sam Tucker, Cindy Timmons, John Standley, Emery Gentry & Jodi Hinsley

## STAFF:

Carol Johnson, Senior Planner; Megan Davchevski, Planner/ Transit Coordinator; Tamara Ross, Planner; Tierney Cimmiyotti, Administrative Assistant & Gina Miller, Code Enforcement Coordinator

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

## **CALL TO ORDER**

Chair Danforth called the meeting to order at 6:31pm and read the Opening Statement.

## **NEW HEARING**

**TYPE I LAND DIVISION, ROYER RANCHETTES SUBDIVISION #S-061-22 & VARIANCE #V-360-22: HOOT ROYER, APPLICANT/ HSG-D LLC, OWNER.** The applicant requests approval to subdivide the property located on Assessor's Map 4N2817C, Tax Lots 1900 & 200. The applicant's proposed subdivision will create 6 lots of at least 4 acres in size. In addition, the applicant requests a variance to the county road standard. The land use standards applicable to the applicants' request are found in Umatilla County Development Code (UCDC) 152.665, Type I Land Divisions & 152.625-630, Variances.

Chair Danforth called for any abstentions, bias, conflicts of interest, declarations of ex parte contact or objections to jurisdiction. There were none. She called for the Staff Report.

## **STAFF REPORT**

Tamara Ross, Planner, presented the Staff Report. Mrs. Ross stated that there are two requests associated with this application. The applicant's first request is for a new subdivision creating 6 lots. Proposed Lot 1 has a manufactured home and the remaining 5 proposed lots are undeveloped at this time.

The applicant's second request is for a variance providing relief from the County's road development standard. They propose to dedicate a new road through the subdivision by extending Horizon Lane and connecting to Southwest 'I' Avenue to provide access to Agnew Road. The substandard width of Southwest 'I' Avenue is outside the boundaries and ownership of the proposed Royer Ranchettes subdivision, and it is considered pre-existing and non-

conforming to the current road standard. The UCDC requires that easements serving more than 4 properties be 60 feet wide. The applicant requests a Variance to the access easement width requirement to reduce the County Subdivision “S-1” 60-foot easement width standard.

Mrs. Ross stated that the property is located north of Westland Road and east of Agnew Road, approximately 1 mile west of Hermiston City Limits. Notice of the applicant's request and the public hearing was mailed on June 3, 2022 to the owners of properties located within 250 feet of the perimeter of Tax Lots 1900 & 200. Notice was also published in the *East Oregonian* on June 11, 2022 notifying the public of the applicants request before the Planning Commission on June 23, 2022.

Umatilla County Sheriff's Office, Communications Captain, Karen Primmer, 4700 NW Pioneer Place, Pendleton, Oregon submitted an agency comment. Mrs. Ross stated that Capt. Primmer requested for the road serving the proposed subdivision to be named Horizon Lane all the way through, in place of Southwest 'I' Avenue. She noted that consistency in road naming makes it easier for emergency response teams to navigate. Mrs. Ross pointed out that Precedent Condition #5 requires the applicants to, "Submit and receive approval for the Road Naming Application of the private easement serving Lots 1 - 3, 5 & 6, renaming Southwest 'I' Avenue to Horizon Lane. If the road renaming is approved, install a new road sign at the intersection with Agnew Road, at a location approved by the Umatilla County Public Works Department."

Mrs. Ross stated that the proposed Conditions of Approval address road improvement and access standards as well as survey and recording requirements, with final approval accomplished through the recording of the final subdivision plat. The land use standards applicable to these requests are found in UCDC 152.665, Type I Land Divisions & 152.625-630, Variances and the decision made by the Planning Commission is final unless timely appealed to the Board of County Commissioners (BCC).

Commissioner Wysocki asked for more information about the Variance request. He asked if staff has researched what it would take to create a 60-foot right-of-way, as required by the UCDC. Mrs. Ross stated that she has not done that research. Megan Davchevski, Planner, clarified that the land owner would need to dedicate part of their property to the easement. However, they are different land owners than the applicant. Therefore, a request to dedicate part of their property for this purpose would likely violate the Takings clause of the Fifth Amendment to the US Constitution which states that no private property be taken for public use without just compensation.

Chair Danforth asked for more information about Subsequent Condition #3 which requires that the applicant obtain all other permits necessary for development (septic, building, etc.). She asked if these requests are approved, and the lots are subsequently sold, what is the harm in the new owners waiting beyond 2 years to develop the land? Mrs. Ross clarified that the 2-year deadline only applies to Subsequent Condition #1, recording the final Subdivision Plat. She

offered to change the language to clarify the terms. Chair Danforth stated that it would be helpful to provide some kind of clarification, otherwise it could be interpreted that the 2-year deadline applies to all the Subsequent Conditions listed. Mrs. Ross agreed to make the language clearer.

Commissioner Standley asked for more information about Lot #4, with access to Westland Road. He questioned if the change in access point for the single lot will cause any issues. Mrs. Ross stated that the applicant received approval for the Westland Road access point in 2020 as part of the approval process for a Type V Land Division, Property Line Adjustment.

Chair Danforth directed the group to page 16 of the Commissioner's packets under Precedent Condition #4 where it states that the applicant must, "Sign and record an Irrevocable Consent Agreement for future participation in improvements to Westland Road to serve Lot 4, if and when, a Local Improvement District is formed for road improvements." Chair Danforth asked if there were any Local Improvement Districts in the region at this time. Mrs. Davchevski stated that there aren't any at this time. However, Planning Staff includes this condition to ensure that all land owners in the area are on the same page when it comes to improvement requirements, in the event that a Local Improvement District is formed at a later date.

Commissioner Standley asked who would have the authority to grant utility companies access to lay cables in the designated right-of-way. Mrs. Davchevski explained that it is designated as a private easement, not a County Road, so the property owners benefiting from the easement would be the authority on that matter.

Chair Danforth asked if Horizon Lane is a County Road. Mrs. Davchevski stated that it is a private easement which will connect to 'I' Avenue, which is an unimproved roadway dedicated to the public and will be maintained by the private land owners.

Commissioner Tucker expressed concern that reasonable standards are not always maintained after roadways are originally established. He asked for more information with regard to the owners shared responsibility of maintenance and repairs in the future. Mrs. Davchevski stated that property owners would need to negotiate that among themselves and any disputes among parties would be considered a civil matter. She added that Irrevocable Consent Agreements (ICA's) are legally binding agreements and recorded as part of the process.

Mrs. Johnson added that road agreements and Covenants, Conditions and Restrictions (CC&R's) are common as part of subdivision requests. However, homeowners are ultimately responsible for all monitoring, compliance and enforcement efforts.

**Applicant Testimony:** Hoot Royer, HSG-D, LLC, 9743 Groundhog Road, Gilmer, Texas & Charles "Chuck" Royer, 78668 Powerline Road, Hermiston, Oregon. Mr. (Hoot) Royer stated that his vision for the property is to get some good use out of it by creating buildable lots. He plans to keep one lot to develop for himself and the rest will be sold to buyers who will be able to develop in the future. He believes this will be the best way to make use of the property.

Mr. (Chuck) Royer stated that he echoes what his son expressed. He pointed out that there is a shortage of 4-acre buildable lots in the area. He added that they hope to enrich the community by providing additional rural homesites offering opportunities for livestock, farming and garden activities.

Chair Danforth revisited her concern about Subsequent Condition #3, which she interpreted as a requirement for the applicant to obtain all other permits necessary for development on all the newly created lots within a 2-year period. She asked if this would be difficult to do, given the vision they expressed for the properties. Mr. (Chuck) Royer agreed that new owners should not be held to a 2-year development timeframe. Mrs. Ross reiterated that the 2-year deadline only applies to Subsequent Condition #1, recording the final Subdivision Plat. She maintained that she is open to changes in the language to clarify those terms. Chair Danforth thanked her for the additional clarification. Mrs. Johnson added that Subsequent Condition #2 & #3 could be removed entirely, if the Planning Commission chooses. They are only in place currently to memorialize the steps which need to happen before development occurs. Chair Danforth stated that she liked the idea of removing #2 & #3 from the list of Subsequent Conditions because she doesn't feel they are necessary to include as they will happen anyway.

Commissioner Wysocki asked for confirmation that there are no water rights on the subject property. Mrs. Ross confirmed that there are no water rights. Commissioner Wysocki pointed out that each new lot owner will be entitled to an exempt well which is able to irrigate 1/2 acre of land, which means the remaining 3.5 acres of each lot will remain dry land. Mr. (Chuck) Royer stated that he is making sure potential buyers are aware that there are no water rights connected to the proposed lots.

Chair Danforth pointed out that the application indicated that a title search of the property did not show the presence of an easement, but an irrigation pipeline is clearly there. She asked for more information about the pipeline present on the property. Mr. (Chuck) Royer stated that he was not made aware of the pipeline until after he purchased the property. He stated that he spoke with Lawrence Pedro, the pipeline owner, and they have plans to come up with an agreement.

Mr. (Hoot) Royer clarified that the pipeline moves from east to west across lots #1 and lot #6. He stated that they found the pipe and did subsequent research but were unable to find any documentation for an easement. As a result, they noted it on the tentative plan for the subdivision, but no other action has been taken at this time.

Commissioner Tucker asked again if anything can be done by Staff or the Planning Commission to require an agreement between landowners to maintain the roadway. He believes a legally binding agreement of shared obligation would help to prevent disputes in the future. Chair Danforth stated that Staff expressed an opportunity for such an agreement in the form of CC&R's.

Mr. (Hoot) Royer stated that he grew up near this property and plans to develop on one of the lots. He expressed personal interest in the road being maintained and irrigation pipe being protected. He stated that he is not opposed to adding language to the CC&R's to ensure all property owners are responsible for the maintenance of Horizon Lane. However, he asked for clarification on which property owners would benefit from the use of the road and should be included in the agreement. Commissioner Tucker stated that the agreement would need to be between the owners of the newly created subdivision lots. He added that it's not likely that a landowner outside of the subdivision, even if they do in fact benefit from the roadway, would agree to a road maintenance obligation. Mr. (Hoot) Royer reiterated that he is not opposed to a road maintenance agreement or contract among the subdivision lot owners. Commissioner Tucker explained that the time to make such an agreement would be now, while all proposed lots are still under their ownership. As a result, when the lots are sold to new owners in the future the agreement will already be in place and stay with the land moving forward.

Chair Danforth pointed out that Precedent Condition #3 requires the applicant to, “[s]ign and record an Irrevocable Consent Agreement for future participation in improvements to Horizon Lane to serve Lots 1 through 3, 5 and 6, if and when, a Local Improvement District is formed for road improvements.” She clarified that Lot 4 would not be included in the ICA, because it has an established access point off Westland Road.

Commissioner Timmons asked about the current state of the property, prior to development. Mr. (Hoot) Royer stated that the land is sandy and covered in dry grass and sagebrush.

Commissioner Williams stated that she feels uncomfortable setting a new standard in the county for easements and believes the matter is best handled directly between the applicant and property owners.

**Proponent Testimony:** Matt Kenny, Kenny Land Surveying, 63036 Spur Loop Road, Heppner, Oregon. Mr. Kenny stated that he is the surveyor for this project and he agrees with the testimony of Mr. (Chuck) Royer and Mr. (Hoot) Royer. He stated that he is happy to answer any additional questions the Planning Commission may have.

**Neutral Testimony:** Chad Ayres, 29620 Horizon Lane, Hermiston, Oregon. Mr. Ayres stated that he purchased his property because it did not have through road access. He explained that all eight families living to the north of Horizon Lane at this time have children, and they like the fact that it is not a through road with less traffic. He does not want this to be an access road to Agnew Road, Westland Road and Powerline Road. He feels that it is safe for the kids right now, but he doesn't think it will stay that way if it becomes a through road. He asked the Royer's why they did not consider a cul-de-sac. Chair Danforth stated that the applicant will answer questions when it's time for rebuttal.

Mr. Ayers explained that there is no shared responsibility agreement for the road at this time and he expressed frustration with some owners who benefit from the use of the road but do not

contribute to maintenance and upkeep. He believes a road agreement is a good idea as part of this subdivision request to ensure all property owners are on the same page.

**Neutral Testimony:** Ramiro Muniz, 29652 Horizon Lane, Hermiston, Oregon. Mr. Muniz stated that he concurs with Mr. Ayers' testimony. He added that he was the first to develop on Horizon Lane and at that time they did sign an agreement to maintain the road which spanned a shorter distance. Since then, it has been extended and this additional extension including a through street and increase in traffic will make it even more difficult for them to properly maintain the road.

**Neutral Testimony:** Raymond Nygard, 29614 Horizon Lane, Hermiston, Oregon. Mr. Nygard stated that he agrees with what has been said by his neighbors. He is in support if this request, as long as 'I' Avenue does not go all the way through to Horizon Lane. He is concerned about the safety of the children on the street. He also expressed concern about the new lots being developed with mobile homes. Chair Danforth stated that placement of a manufactured dwelling is allowed in this zone. Mr. Nygard stated that he is concerned how that would affect property values in the area.

Commissioner Hinsley asked for additional clarification about Horizon Lane. Chair Danforth stated that it is located on the north end of the proposed subdivision. According to the Commissioner's packets, it's a gravel road and will stop at the southern end of tax lots 1800 and 1802. Mr. Nygard stated that currently, the gravel road stops at proposed lots #1 & #6 on the subdivision map and added that they could prevent the road from connecting to Horizon Lane by dead-ending the road at that location.

**Neutral Testimony:** Ryan Nicodemus, 29612 Horizon Lane, Hermiston, Oregon. Mr. Nicodemus stated that he lives directly north of proposed Lot #6. He echoes what his neighbors have said and added that he has a good relationship with the Royer's. He expressed that his main concern is the plan for 'I' Avenue to connect to Horizon Lane because the traffic on the gravel road is already a problem. He pointed out that the Royer's own a majority of the properties to the north and he believes connecting through to 'I' Avenue is not necessary.

Mr. Nicodemus asked staff for clarification about 'I' Avenue being designated for public access and asked how they will be expected to maintain a road that has become a thoroughfare.

Mrs. Davchevski stated that the applicant originally submitted a request which included plans for a cul-de-sac. However, upon review Planning Director, Robert Waldher, found the Umatilla County Transportation System Plan (TSP) states that cul-de-sac lengths in excess of 300 feet are prohibited. Keeping open throughways is important for ease of connectivity and access for emergency services. Additionally, to answer Mr. Nicodemus's question, 'I' Avenue is a 'dedicated to the public' roadway which was dedicated back in the 1920's on a subdivision plat. As a result, everyone is authorized to use that section of road.

Mr. Nicodemus stated that he has concerns about the irrigation pipeline that crosses the subdivision property. He has seen issues like this, where the pipelines are not properly maintained, and it causes bigger issues as time goes on. He asked, now that we know it is there, why isn't anyone doing anything about it?

**Neutral Testimony:** Lawrence Pedro, 78710 Westland Road, Hermiston, Oregon. Mr. Pedro stated that the irrigation pipeline supplies water to his farm located on the east side of Westland Road. In the past, he leased the land from Norma Quick and farmed the ground. Mr. Pedro explained that he now owns the land and the pipeline that crosses the subdivision property supplies water to one of his circles, approximately 125 acres in size. He added that the irrigation pipeline in question is a 10-inch PVC pipe that delivers roughly 1,000 gallons per minute.

Mr. Pedro stated that the property was initially serviced by an irrigation ditch. In the late 1970's or early 1980's they installed a pressurized irrigation system. He explained that they simply laid the pipeline in the bottom of the canal and covered it, so it's not in a direct line to his property. He said he spoke with Mr. (Chuck) Royer and learned that they had not found a recorded easement for the existing irrigation pipeline. Mr. Pedro took that to mean the Royer's didn't plan to avoid the pipeline as they developed. He agreed that there is no recorded easement for the pipeline but insisted that there is likely a recorded easement for the original canal, someone just has to locate it. He stated that he does not want to slow down the Royer's development progress but really hopes they can come to an agreement to work things out.

**Public Agency:** Curtis Engbretson, District Manager, Westland Irrigation District, 77096 Highway 207, Echo, Oregon. Mr. Engbretson stated that the irrigation pipeline enters the property from the north side of Tax Lot #400 and goes through Lots 1 & 6 of the proposed subdivision.

Chair Danforth asked Mr. Engbretson if he has any idea why the irrigation easement was never recorded. Mr. Engbretson did not have any additional historic information to provide. He stated that he has completed an exhaustive search of all their records and found nothing. He believes the original canal was established sometime in the 1930's or 1940's and added that his records don't go back that far. He also expressed concern about potential development directly over the pipeline.

Commissioner Green asked how deep the pipeline is buried in the ground. Mr. Engbretson guessed that it's approximately 3-4 feet deep. Someone would have to dig it up to be sure.

Commissioner Standley asked who would be responsible for identifying the exact location of the pipeline, to ensure no homes are built on top of it. Mr. Engbretson stated that the Royer's and Mr. Pedro should work together to determine the exact location of the pipeline before developing the land. He explained that the water comes from the Westland Irrigation District's system, but the pipeline itself is a privately-owned line.

Commissioner Timmons asked Mr. Engbretson if he has consulted with Oregon Water Resources (OWRD) about the easement. Mr. Engbretson stated that he had not. He added that OWRD oversees water rights but does not manage irrigation easements.

Commissioner Tucker stated that he understands that easements for old water rights sometimes exist and sometimes don't exist. He acknowledged that water rights established over a hundred years ago were written in a way that generally identified properties and there may not be an answer about whether an easement in writing exists. He feels the bottom line is, the pipeline exists today and a home should not be built on top of it. Development on this land will have to be done in a safe and responsible way to avoid potential issues related to the irrigation pipeline.

Commissioner Williams echoed what Commissioner Tucker said. She added that she feels the pipeline easement is a potential legal issue which needs to be addressed before the Royer's move forward with their proposed project.

Mr. Engbretson explained that the pipeline was laid in the irrigation ditch, which likely had a recorded easement. He advised the Royers and Mr. Pedro to look for an easement for the irrigation ditch/ canal which existed prior to the buried pipeline.

Chair Danforth stated that they will not be able to determine exactly where the pipeline runs at the meeting tonight. Mr. Engbretson agreed and stated that they will keep trying to locate documents associated with the original canal.

**Neutral Testimony:** Lawrence Pedro, 78710 Westland Road, Hermiston, Oregon. Mr. Pedro stated that the pipeline was laid at the bottom of the existing canal at various depths. Due to bank erosion and other factors, the pipeline could be anywhere from 2-6 feet deep in any given spot. Additionally, he believes locating the line will require bringing in a backhoe to depressurizing the pipe prior to digging, for safety reasons. Therefore, he would like this work to be done in the off season. He does not want anyone to build on top of it, or a certain distance from it. He owns the pipe, and he wanted to know who would be responsible for the cost of making the pipeline a straight line across the property, if they chose to go that route.

**Applicant Rebuttal:** Hoot Royer, HSG-D, LLC, 9743 Groundhog Road, Gilmer, Texas & Charles "Chuck" Royer, 78668 Powerline Road, Hermiston, Oregon. Mr. (Hoot) Royer stated that he would like this land cared for and used well. He wanted the surrounding land owners to know that he had planned for a cul-de-sac, not a through road, but as Mrs. Davchevski stated the UCDC doesn't allow for that.

Mr. (Hoot) Royer stated that he and his father have made efforts to lay gravel and help maintain the road but acknowledged that many of the other neighbors have helped a great deal as well. He intends to continue to be a good steward of the land and good neighbor. Regarding the pipeline, he assured the planning commission and his neighbors that he is not ignoring that it's there. Although they were unable to find any records of the easement, he still intends to be responsible

and work with Mr. Pedro to find a solution. He stated that his dad, Chuck Royer, farms in that area and they do not want to do anything to negatively impact the pipeline, including placing structures over it. He understands the safety issues associated with building on top of a pressurized pipeline and would never want to put another family in that position.

Mr. (Hoot) Royer concluded that he believes he has been a good neighbor and will continue to be a good neighbor. He and his family have worked hard to invest in the property. They cleaned up a bunch of illegal dumping that occurred on the property, fenced the perimeter to keep trespassers off and mowed the property to reduce the fire hazard. He reminded the group that he plans to build a home and live at the site, as well.

Mr. (Chuck) Royer stated that the speed limit on the road is 15 miles per hour. He doubts many people will choose to come off Agnew Road, which is paved, to drive on a gravel road instead. He explained that he was not aware of the irrigation pipeline on the property until after he already purchased it. He anticipates the lots making a nice neighborhood. He stated that he has invested a lot of money in this project and is looking forward to completing it.

Commissioner Williams asked if there is a way to locate the pipeline easily on the lots. She added that the newly created lots to the south, which will not contain the pipeline should be ok to move forward with development whenever the owners are ready. Mr. (Chuck) Royer stated that it was relatively easy to dig up the pipeline to determine its exact location before they placed a manufactured home at the site last year. He stated it's buried approximately 3-4 feet deep and agrees that it would be best to wait until after the growing season to uncover the pipeline. Mr. (Hoot) Royer agreed and added that he has spent over \$1,000 on equipment in efforts to locate the pipeline because he knows it is important information to consider before developing. He reiterated that he is happy to work with Mr. Pedro to find a solution that meets everybody's needs.

Commissioner Standley suggested the Planning Commission could come up with some language to memorialize the location of the pipeline so 50 years from now, future owners won't unknowingly build on top of it. Mr. Kenney suggested a condition to add language to the face of the plat and include the pipeline location on the final plat map. He stated that the best solution would be to relocate the pipeline into an established easement. However, if that is not possible, adding language to the map will ensure that future owners are aware of the location and can avoid building over the pipeline.

Chair Danforth closed the hearing for deliberation.

## **DELIBERATION & DECISION**

Chair Danforth stated that she likes the idea of adding language to the face of the plat and include the pipeline location on the final plat map. She believes this will help ensure safe

construction on the lots in the future and protect the pipeline. Commissioners Green and Standley were in agreeance.

Commissioner Williams made a motion to approve Type I Land Division, Royer Ranchettes Subdivision #S-061-22 & Variance #V-360-22 with the removal of Subsequent Conditions #2 & #3 and addition of a Subsequent Condition to show the private irrigation pipeline on the face of the plat to provide protection and access for the maintenance and repairs of the pipeline. Commissioner Green seconded the motion. Motion passed with a vote of 9:0.

#### **NEW HEARING**

**LAND USE DECISION REQUEST, VERIFICATION OF NON-CONFORMING USE #LUD-285-22: VINCENT VAZZA & JANICE LOHMAN, APPLICANTS/ OWNERS.** The applicants are requesting Verification of Non-Conforming Use approval to continue the use of the subject property as an apiary with accessory beekeeping equipment repair and an equipment/ automotive repair business. The Land Use Standards applicable to the applicants' request are found in Umatilla County Development Code (UCDC) 152.600, Verification of Non-Conforming Use.

Chair Danforth called for any abstentions, bias, conflicts of interest, declarations of ex parte contact or objections to jurisdiction. Commissioner Williams stated that her husband has a bee company and they have done business with Vincent Vazza in the past. She explained that the beekeeping community in the area is tightknit and they often provide support and help each other. For those reasons, she chose to abstain from voting on this matter.

Chair Danforth called for the Staff Report.

#### **STAFF REPORT**

Megan Davchevski, Planner, presented the Staff Report. Mrs. Davchevski stated that the request before the Planning Commission tonight is to verify a non-conforming use on Tax Lot 1001 located on Assessor's Map 5N2933. The property is located north of Highway 207 and west of Cabana Road, approximately 3 miles northeast of the City of Hermiston.

Mrs. Davchevski explained that the applicants are requesting verification of two uses: an apiary and repair of associated farm equipment and an automotive/equipment repair business. Beekeeping (apiary) and associated farm equipment repair is considered a farm use. Farm uses are allowed outright in the Rural Residential 4-acre minimum zone (RR-4) and thus do not require permits. The application and applicants' narratives address both the beekeeping operation and the automotive/ equipment repair business. However, only the automotive/equipment repair business requires a determination of Verification of Non-Conforming Use.

Mrs. Davchevski pointed out that a supplemental narrative provided by the applicants is included as an attachment in the Commissioner's packet. The narrative provides a timeline of the uses

occurring on the subject property since it was first rented by Vazza Farms in 1981, and later purchased in 1992. The applicants provided a letter of support from their neighbor, Dennis Lovely. After Planning Staff requested further information the applicants provided a narrative which is also included in the Commissioner's packets along with additional documents to support their request.

Mrs. Davchevski stated that the Standards of Approval are found in UCDC 152.600, Verification of Non-Conforming Use. Standards for reviewing a Verification of a Non-Conforming Use generally consist of evaluating evidence to determine when the use was established, if it was lawful in accordance with zoning ordinances at the time it was established, and if the use has continued for the last ten years. The applicant must be able to demonstrate that all of the standards are met. The burden of proof remains on the applicant.

Mrs. Davchevski stated that a public notice of the applicant's request and the public hearing was mailed on June 3, 2022 to the owners of properties located within 250 feet of the perimeter of Tax Lot 1001. Notice also was published in the *East Oregonian* on June 11, 2022 notifying the public of the applicants' request before the Planning Commission on June 23, 2022. Hermiston Irrigation District provided neutral comments. They stated that they did not object to the request and added that the property has 3 acres of water rights.

Mrs. Davchevski explained that Staff compiled the applicants' evidence and presented the criteria with evidence in the Staff Report. As outlined in the Staff Report, unless the applicants provide additional information before the Planning Commission, the automotive/equipment repair business does not satisfy the approval standards for a Verification of Non-Conforming Use. The Planning Commission is tasked with determining that all the following requirements are met for each proposed use; First and foremost an applicant must provide proof that the use of any building, structure or land existed as a "lawful" use at the time the law was applied or changed.

Second, counties may adopt and provide an option for an applicant to establish a "rebuttable presumption" by the submission of proof of the existence, continuity, nature and extent of the use for the 10-year period immediately preceding the date of application. Proof of the use for the 10-year period is sufficient to entitle the applicant to a rebuttable presumption. This presumption may be rebutted by evidence in opposition to the applicant's proof. Proof that a use existed 10 years ago does not mean that the use existed when the zoning or other land use regulation was first applied more than 10 years ago or that the use existed legally at that time. This burden remains on the applicant and must be met.

Finally, applicants cannot be required to provide more than 20 years of proof of existence as an element of continuity of use lawfulness. The applicant must prove; that the use, when initiated, was a legal use allowed in the zone and the applicant complied with the permit requirements (if

any) to establish the use and the use has existed continuously for at least 10 years, but the applicant cannot be required to prove more than 20 years of continual existence.

The decision made by the Planning Commission is final unless timely appealed to the County Board of Commissioners.

Commissioner Tucker asked for more information about the regulation the applicant did not comply with. Mrs. Davchevski stated that the main criteria is determining if the use established on the property was lawful at the time the activity began in 1981. She explained that the County's 1972 Zoning Code applied, and the land was zoned Exclusive Farm Use (F-1). At that time, only equipment repair businesses in conjunction with farm use would have been allowed in the F-1 Zone and the use would have been lawfully established through approval of a Conditional Use Permit (CUP). Commissioner Tucker asked if Mr. Vazza had applied for a CUP when the activity began in the 1980's, would the request have been approved? Mrs. Davchevski stated that they would have had to demonstrate that they met all applicable Standards of Approval at that time which included the requirement that the activity was in conjunction with farm use.

Chair Danforth asked if Mr. Vazza applied for a CUP today, would this activity be an allowed use in the RR-4 Zone? Mrs. Davchevski explained that it is not directly written into the UCDC as an allowed use in this zone. There is an opportunity for a Home Occupation in the RR-4 Zone, but a dwelling is required to be on the property first. She pointed out that this parcel of land does not have a dwelling. Additionally, Home Occupations have restrictions on vehicle traffic, employees, deliveries, parking, direct sales and other actions that could disrupt residential activities.

Chair Danforth asked how this issue was brought to the attention of Planning Staff. Mrs. Davchevski stated that she believed Code Enforcement happened upon the activity at the property while performing patrols in the area.

**Applicant Testimony:** Vincent Vazza & Janice Lohman, 77225 Colonel Jordan Road, Hermiston, Oregon. Mr. Vazza stated that the business started out as an apiary with maintenance performed onsite. Over time, the apiary was moved to another primary location, but the equipment maintenance activity continued. Eventually, the owner of the auto repair business, Jim Abell, began taking on outside work because Mr. Vazza did not have enough work to sustain his business alone. Mr. Vazza stated that he is not sure why the Code Enforcement complaint came about.

Mrs. Lohman stated that the activity is being portrayed as a business, but she asserts it is not. She described the activity as repairs done in an agriculture shop. She added that Mr. Abell does not have employees and never has. She feels that the activity does not impact the neighborhood. She explained that, in addition to the shop, Mr. Abell currently rents the house on an adjacent tax lot, 80720 N Cabana Road, Hermiston.

Commissioner Standley asked if the business is advertised. Mrs. Lohman replied, no. She explained that there are no signs on the building and the business is operated by word-of-mouth. Most of his customers are farmers in the area but Mr. Abell occasionally repairs automobiles. Mr. Vazza stated that Mr. Abell is a skilled worker and there is demand for the specialized work he does.

Commissioner Hinsley asked, approximately how long Mr. Abell has been taking outside customers? Mr. Vazza stated that he worked for them off and on over the years, but 15 years ago Mr. Abell began renting the house and shop building and started taking on outside work at that time.

Commissioner Timmons asked if there are still bees on the property at this time. Mr. Vazza replied that there are no bees on the property right now. Commissioner Timmons asked how far away is the property to which the bees have been relocated? Mr. Vazza stated the bees are now on the opposite side of town, about 10 miles away.

Chair Danforth asked for the map to be displayed. She explained that the applicant owns both the subject parcel with the shop and an adjacent parcel with the dwelling, and Mr. Abell rents both.

Commissioner Tucker asked how frequently Mr. Abell provides equipment repair services for Mr. Vazza. Mr. Vazza said after 2005, he has only been able to provide about a quarter of his business.

Mrs. Davchevski clarified that the activity in question is the mechanic/ repair shop, not the bee keeping or bee keeping repair activities. Additionally, farm equipment repair is allowed but only when repairing farm equipment that is being used on the subject property. She further explained that, since they also own the property to the west, the two lots together are considered a farm tract, and therefore Mr. Abell can repair machinery which supports the entire farming operation on both lots. However, repair of additional equipment from outside farming operations is considered a commercial activity.

**Public Agency:** Gina Miller, Program Coordinator, Umatilla County Code Enforcement, 216 SE 4<sup>th</sup> Street, Pendleton, Oregon. Ms. Miller stated that in March of 2022 she received a complaint from a neighbor regarding operation of an auto repair business in a residential zone. As a result, Ms. Miller conducted several site visits to observe activity at the property. On her third site visit she encountered Mr. Abell and after further discussion regarding the activity occurring on the property, it was confirmed that he was operating an automobile/machine repair business.

Ms. Miller explained that the applicants and Mr. Abell came to the Planning Department to meet with staff right away to discuss possible ways to bring the property into compliance. Because they made contact so quickly, staff agreed to hold off on initiating an official code violation case while they pursue approval of a preexisting/ nonconforming use.

Commissioner Hinsley asked Ms. Miller if she or the neighbor were aware when the complaint was made that vehicles were being repaired on the property unrelated to farming operations occurring on the parcel? Ms. Miller stated that she only received information pertaining to the business from Mr. Abell. She added that, prior to speaking with him, she did not see an abundance of vehicles or other indicators that would lead her to believe an auto/machine repair business was operating on the property.

**Applicant Rebuttal:** Vincent Vazza & Janice Lohman, 77225 Colonel Jordan Road, Hermiston, Oregon. Ms. Lohman stated that she appreciates Ms. Miller for pointing out the problem. She hopes the Planning Commission will decide that this is an agricultural business and Mr. Abell just supplements his income with additional outside work. She believes activities like this are common practice in the area and if the Planning Department started shutting all those businesses down, it wouldn't be pretty. She said they are doing the best they can to comply and this was the path they were advised to take by Staff. She added that, if there is another way to permit this activity, they are open to exploring that.

Commissioner Wysocki asked if Mr. Abell was not able to supplement his income with outside work and needed to relocate, what position would that leave them in? Mr. Vazza stated that they would be fine, but it would be unfortunate because Mr. Abell is an incredible problem solver and has been a great help to him over the years. He added that Mr. Abell depends on this business for his livelihood and they believe he is invaluable.

Commissioner Timmons asked if Mr. Abell provides assistance and repairs at their other apiary locations. Mr. Vazza said he is sometimes mobile and has helped at other locations when needed but prefers to work on machines in his shop.

Chair Danforth added Hermiston Irrigation District's comment into the record as Exhibit A and closed the hearing for deliberation.

## **DELIBERATION & DECISION**

Chair Danforth stated that she appreciates Mr. Vazza and Ms. Lohman's plight and would like to approve a preexisting/ nonconforming use. She stated that she believes the two lots could easily be one lot, and they have been there a long time, so it's preexisting activity. Commissioner Standley agreed and asked if the group would entertain a motion to approve the request.

Mrs. Davchevski stated that Staff's Findings determined the applicant does not meet the standards and the mechanic/auto repair shop was not lawfully established. Therefore, Staff did not prepare any Conditions of Approval. As a result, if the Planning Commission feels the applicants do in fact meet the standards, they must create new Findings to demonstrate that, and include Conditions of Approval.

Chair Danforth stated that she is sorry the applicants do not meet the standards, but she thinks not everything is black and white. She believes they could add a Conditions of Approval stating that the activity must cease when the current owners move away. She pointed out that the adjacent property with the dwelling could be combined with the subject parcel. Once that has been achieved, the applicant may qualify for a CUP Home Occupation.

Commissioner Tucker asked staff if combining the two adjacent properties would solve the issue. Mrs. Davchevski stated that matter for this hearing is whether the applicant meets the standards for Verification of Non-Conforming Use. Regarding an application for a Property Line Adjustment to eliminate the lot line between the two parcels, she stated that the applicants could pursue that route. The process would include a survey of the property and new legal description. She added that the Property Line Adjustment would be a different request than the one before the Planning Commission tonight.

Commissioner Tucker stated that he believes staff's analysis of the request is correct, but the opportunity for the applicant to pursue approval via a Home Occupation after a Property Line Adjustment is completed, is another path the applicant can take to accomplish what they want.

Commissioner Wysocki stated that he doesn't want to see the apiary business disadvantaged. He believes Commissioner Tucker's suggestion of the alternative path by obtaining a CUP would be a good resolution.

Commissioner Standley made a motion to deny Land Use Decision Request, #LUD-285-22, Verification of Non-Conforming Use. Commissioner Tucker seconded the motion. Motion passed with a vote of 8:1.

## **MINUTES**

Chair Danforth called for any corrections or additions to the minutes from the May 26, 2022 meeting. There were none. Commissioner Timmons moved to approve the minutes as presented. Commissioner Tucker seconded the motion. Motion carried by consensus.

## **ADJOURNMENT**

Chair Danforth adjourned the meeting at 10:42pm.

Respectfully submitted,

Tierney Cimmiyotti,  
Administrative Assistant

Minutes adopted by the Planning Commission on August 25, 2022.