

MINUTES
UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, November 16, 2017
6:30 p.m., Umatilla County Justice Center, Media Room
Pendleton, Oregon

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COMMISSIONERS

PRESENT: Suni Danforth, Chair, Gary Rhinhart, Vice Chair, Don Wysocki, Don Marlatt, Tami Green (attended via conference speakerphone)
ABSENT: Randy Randall, Tammie Williams, Clive Kaiser, Cecil Thorne
STAFF: Bob Waldher, Planning Director, Carol Johnson, Senior Planner, Tierney Dutcher, Administrative Assistant

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

CALL TO ORDER

Chair Danforth called the meeting to order at 6:30 p.m. and read the Opening Statement.

MINUTES

Chair Danforth asked the Planning Commission to review the minutes from the October 19, 2017 meeting. Chair Danforth stated that toward the bottom of page 6 she is mistakenly referred to as Commissioner Danfield. Tierney Dutcher, Administrative Assistant, stated that she will make that change. Commissioner Rhinhart moved to adopt the minutes with the noted change. The motion was seconded by Commissioner Marlatt. Motion carried by consensus.

NEW HEARING

COMPREHENSIVE PLAN TEXT AMENDMENT & GOAL 3 EXCEPTION, #T-17-075, COMPREHENSIVE PLAN MAP AMENDMENT, #P-121-17 & ZONING MAP AMENDMENT, #Z-312-17, applicant/property owner, 3R Valve, LLC, Kent Madison, Member

The applicant requests a Post-Acknowledgment Plan Amendment to rezone approximately 11 acres of Exclusive Farm Use (EFU) zoned land to a Rural Retail Service/Commercial (RRSC) Zone with a LU, Limited Use Overlay Zone. The property is identified as Tax Lot #103 on Assessors Map #4N 28 33B and is located at 29701 Stanfield Meadows Road, Hermiston, Oregon 97838. The property is south of the Umatilla River situated between State Highway 207 and Stanfield-Meadows Road, approximately one mile south of the City limits and Urban Growth Boundary of Hermiston. The applicant's request includes the following land use actions: 1) Amendment of the County Comprehensive Plan Text and approval of a Statewide Planning (Agriculture) Goal 3 Reasons Exception; 2) Amendment of the County Comprehensive Plan Map from North South Agriculture to Commercial; 3) Amendment of the County Zoning Map from EFU to RRSC Zone & LU, Limited Use Overlay Zone.

The Goal Exception must comply with the Goal 2 Exception process, Oregon Revised Statutes (ORS) 197.732 and the reasons exception criteria in Oregon Administrative Rule (OAR) 660-004-018, 660-004-0020, 660-004-0022. Also, addresses OAR 660-014-0040, Goal 14, the OAR 660-012-0060,

Transportation Goal 12, County Transportation System Plan (TSP) and Umatilla County Comprehensive Plan Policies from Chapters 10-12, 14, 15, 17 and under Chapter 18 how the exception meets one of three general types of Commercial lands for the exception. And Umatilla County Development Code (UCDC) Sections 152.019, RRSC Zone Sections 152.251-152.256, Limited Use Overlay Zone Sections 152.530-152.536. The process follows the UCDC Section 152.750-152.755 for Amendments.

STAFF REPORT

Carol Johnson, Senior Planner, stated that she processed the applicants request for amendments to the County's Comprehensive Plan Text and Maps. The applicant/owner is 3R Valve LLC, Kent Madison. The property is located to the south of the Umatilla River between the Butter Creek Highway (State Highway 207) and Stanfield-Meadows Road, approximately one mile south of the Hermiston city limits and Urban Growth Boundary or (UGB). The applicant requests a zone change from Exclusive Farm Use (EFU) to Rural Retail/Service Commercial (RRSC) through a "reasons exception" to Statewide Planning Goal 3. Planning Goal 3 preserves and maintains agricultural lands.

The applicant proposes the following uses; travel trailer (RV Park), use of an existing farm shop building by Jack-E Up LLC, as a machine or welding shop for fabricating and selling trailer hitches, or alternatively, use of the shop building as an office for a different business, use of an existing dwelling as an office for wind service technicians for dispatch to maintain and repair area wind power projects, or use of the dwelling as an accessory dwelling for the RV Park operator (caretaker).

ORS 197.732(2)(c), Statewide Planning Goal 2, and OAR 660-004-0020(2)(a), provide for an exception to a statewide planning goal to authorize uses of land not otherwise allowed under the goal, if there are sufficient reasons that justify why the applicable goals should not apply. In addition, OAR 660-004-0022 (1) sets out general standards for a reasons exception. The rules consist of four standards; "sufficient reasons" standard, "reasonable accommodation" standard including steps for the "alternative sites analysis" for evaluation of 1) sites within existing exception areas, 2) irrevocably committed resource lands, and 3) urban growth boundaries or UGBs, "environmental, economic, social and energy" or ESEE standard, and "compatibility standard."

OAR 660-004-0022 (1) and OAR 660-004-0020 (2)(a), require a determination that there are "sufficient reasons" to authorize a use or uses not allowed by the applicable goal. One proposed use justified by one reason may not necessarily justify another proposed use. OAR 660-004-0020 (2)(b), "reasonably accommodate standard," asks a very different question from the question posed by the ESEE analysis required in (2)(c). The "reasonably accommodate" standard is the more difficult to satisfy because it does not ask which site is better suited, it asks which alternative site can "reasonably accommodate" the proposed uses and the analysis is not limited to only lands owned or controlled by the applicant.

OAR 660-004-0020 (2)(b)(B) allows for economic factors to be considered in determining that the use cannot "reasonably be accommodated" in other areas. However, Goal 9, the economic goal, does not impose particular requirements on rural lands outside of urban growth boundaries and although economic development is important to the County it is not necessary for the County to change zoning

from EFU to RRSC to meet or satisfy Goal 9. Therefore, the desire to diversify uses or add to the local economy is not in itself a “sufficient reason” to justify an exception to Goal 3. Otherwise, this approach would allow exceptions to be easily approved and would be contrary to the Statute, because exceptions are just that, exceptional.

The ESEE standard under OAR 660-004-0020 (2)(c), assumes the exception is justified for the proposed uses and therefore, the rule asks whether other resource land, that also would require a Goal exception, may be better suited for the proposed uses. However, properties similarly situated and that also would require a zone change and exception were not offered or considered by the applicant in the application materials.

Subsequently, OAR 660-004-0020 (2)(d), the “compatibility standard”, requires determination that the proposed uses are compatible with adjacent uses, or will be made so through measures to reduce adverse impacts. Again, if there are sufficient reasons to justify each proposed use the County’s Plan and Zoning designations must effectively limit uses, density, and services to only those justified by the reasons exception. In addition, the applicant referred to several policies of the County Comprehensive Plan, and Statewide Planning Goals as presented in the report.

The Planning Commission’s decision is a recommendation to the Board of Commissioners. Options for the Planning Commission’s consideration are available on page 58 of the commissioner’s packet.

Chair Danforth noted that Commissioner Green is attending the hearing tonight via conference speakerphone.

TESTIMONY

Applicant Testimony: Kent & Laura Madison, 28647 Madison Road, Echo, Oregon. Mr. Madison stated that the application was completed with the assistance of his Attorney, Lolly Anderson and Shae Talley is the Engineer who completed the Traffic Impact Analysis. Both women are present and available for questions.

Mr. Madison stated that he and his wife are farmers out of Echo. He started with history of the property. He did not purchase the property with the intention to do what he is asking for today. Around 2008, John Deere Renewables approached him with a contract to build a windfarm on their land and the neighbors land. John Deere Renewables built the windfarm and in the process of permitting it, they were required to establish a right of way for the power line to reach the Hinkle Substation where the windfarm is contracted to deliver power to Pacific Power. John Deere Renewables acquired this property from Steve and Shelly Walker in order to establish that right of way. After the permitting was complete, John Deere Renewables asked Mr. Madison if he would like to purchase the property from them at a discount. It was known that the property did not have much value. It had a house, a farm/shop and a covered building. He was unable to find a definitive record of when the property was last farmed. Bill Profilly, Manager of the Westland Irrigation District, told him that he thought it was last farmed by the Walker family in the late 1970’s or early 1980’s. Mr. Madison stated that when he purchased the property from John Deere

Renewables, he assumed his only revenue stream would be the rental of the house. After purchasing this property he transferred the water rights from this property to another Madison Ranches Inc. property located in the Westland Irrigation District. He explained that they did not abandon water rights from EFU ground, they were just moved to a more productive location.

Chair Danforth asked for clarification about the ownership history of the property. The Staff Report noted that Mr. Walker sold the property to Madison Ranches. However, Mr. Madison has stated that he purchased the property from John Deere Renewables. Mr. Madison reiterated that the Walker's sold to John Deere Renewables and they had ownership for about 2 months before it was sold to Madison Ranches. Mrs. Johnson stated that she had done research on ownership as part of the permitting process and was only able to find information that showed the property was sold by the Walker's to the Madison's. She added that, there is a chance that contract was not officially recorded. Mr. Madison stated that he did not purchase the property for the transmission rights, nor to do anything they are proposing to do today. He is making this proposal today because he owns the property and is not sure what else they could do on it.

Mr. Madison presented a series of images aerial pictures of various farm properties in the county where, over time, the use has changed and development has occurred. He stated that, when water rights are moved from unproductive farm ground to productive farm ground they are benefiting the community as a whole. Commissioner Rhinhart stated he believes that when you lose farm ground and open space, it is gone and never coming back. Mr. Madison stated that he agrees with that, but from a standpoint of the value it brings to society in terms of food production, a little may have been lost. However, when the water right is transferred to another productive piece of farm ground the benefit is ultimately greater.

Commissioner Rhinhart stated that a lot of the investment coming from the new Farm Bill will be granted to small acreage properties. They will be encouraging people to farm those smaller properties and, down the road, they will be looking at 10 acre lots as viable pieces of farmland. Mr. Madison stated that, if it is economical for a land owner to farm the property today, he will farm it today. If it is not economical for the farmer, and the government wants them to farm those smaller parcels, they will have to subsidize the land owner in order to make it viable. The result, from a tax based standpoint, will be a net loss to society. Commissioner Rhinhart stated that he still does not see it as a good thing because if looking long term, Oregon is losing over 100,000 acres of high value EFU ground and almost a million acres of EFU and forest ground are being developed every year. He believes that, at some point, we won't be able to eat unless we come up with alternative ideas and sites to grow crops. Mr. Madison stated that he is not a developer out of Portland coming into our community with the intention to take agricultural land out of production. He would like to build an RV park because they have nothing else to do with that piece of land.

Mr. Madison stated that Vestas, the company that provides service personnel for the windfarm, is currently located in Hermiston. Employees start their day by driving to Hermiston to get in the trucks then drive back through Hermiston to do maintenance on Madison Farm. They estimate they are spending \$100,000 annually, transporting employees from their current service territory to Madison Farm. The additional cost of transport is reflected in the bottom line cost passed down to the owners of

the windfarm. Mr. Madison and his wife are 7% owners of the windfarm. He was approached by Vestas with a request to rent the house on his farm to use as a facility. After consulting County Planning, they learned they were not allowed to use the home on this property for the wind industry, unless he changed the zoning designation. If he had originally asked for the property with home to be included as a wind maintenance facility in the Conditional Use Permit (CUP) he received, he could have had that option. He stated that he can also legally use high-value farm ground on Madison Farms to build a facility for Vestas, but he doesn't like that idea. He would rather use this property because it is low-production and low-value farm ground.

Mr. Madison stated that he would like to do something productive with the remaining 4 acres available on this property. The property has solar panels that are spaced out and the power poles are approximately 50 feet high. The power lines must be located twice the distance from the solar panels in order prevent shading. This requirement keeps him from placing solar panels any closer to the edge of his property. Between the solar array and windfarm, they have met the substations capacity to receive renewable energy. He stated that he can't argue with Mrs. Johnson's comments and issues with the application, but he wants to allow for continued economic growth.

Commissioner Wysocki asked what the soil type on the property is. Mr. Madison stated that it is incredibly sandy. It would have been productive land, but because of the size it has not been in production for 35 years. He believes it has not been producing any benefit to society and the economy does not allow for it to be productive. He asked why we continue to keep it under the same zoning designation. Commissioner Rhinhart stated that not everything needs to make money. Some things are better left alone. He added that, prior to the wind and solar development, that land may have been a perfect place for wildlife like pheasants and deer. He would consider that a benefit. He believes it's important for farmers to consider how they are protecting the ground and what it will be like a couple hundred years from now. Commissioner Rhinhart stated that he understands that money is the driving force for everything but it is not the only benefit. We cannot consider this application based on money. The property should be looked at as having value because it is farm ground, and the Commissioners are required to follow the rules in place to protect EFU lands. Mr. Madison stated that he is asking for an RV park overlay zone because it's located along to Highway 207 and it is in a flood zone. He feels that if they were to have a flood issue they could easily move an RV, as opposed to anything else. They do not plan to put any structures in the flood zone area. The wastewater treatment and other various structures like that will be located outside the area.

Chair Danforth asked Mr. Madison if he prepared a proposal for the RV site. Mr. Madison stated that he intends to make a 40 unit RV Park. Chair Danforth stated that she appreciates Mr. Madison's presentation. She acknowledged that he showed the farm ground has not recently been productive and the water rights have been moved to another parcel. However, under OAR 660-033-0020(9), "an area or tract within a water or irrigation district that was once irrigated shall continue to be considered "irrigated" even if the irrigation water was removed or transferred to another tract." She stated that this means the soil class has not changed even though there is currently no irrigation on the property. Additionally, she stated that many of the chapters and policies required to approve an application like this have not been met. After researching the request, she made a list of ten places where the minimum

requirements are not met, so she has a problem moving this request forward. She asked if they have looked for other properties for this purpose. She also asked if there is a contract with Vestas to use the facility. Mr. Madison stated that he has an agreement with Vestas that they will use the property if the zone can be changed. Chair Danforth stated that the Planning Commission needs facts presented, in place of assumptions. Mrs. Johnson provided clarification on the operation and maintenance building attached to the wind project. She stated that there is a provision in the CUP section of the Development Code. The application for a transmission line is a Land Use Decision (LUD) and not a CUP. The CUP applies to the land where the project is located. If, at that time, they had wanted to place an operations and maintenance building there, or use an existing building, they could have included this as part of the approval request. Our current County Development Code Standards for Review of Conditional Uses and Land Use Decisions under (HHH) Commercial Wind Power Generation Facility still allows this as a use, although it does express a preference that it be located in an appropriate zone. Mrs. Johnson also stated that in 1997, Mr. Walker was permitted to build a shop on the property for the purpose of storing melons. As pointed out by Chair Danforth, storage of farm crops is considered a farm use, even if it is on land that does not contain a crop. Mr. Madison stated that the Walker's also farmed in other locations around the county. He stated that it was being used as a processing and storage facility but the land has not physically raised a commodity since 1984. He stated that he understands that the process for building an RV park requires him to find a zone that already allows for that use. However, he does not really want to build an RV park. He just wants to do more with the property to benefit the community. He unable place any additional solar panels on it, and it's not economical to farm.

Chair Danforth stated the applicant is burdened with the task of proving that they have met the requirements for an application to be approved. They are expected to do due diligence and follow the processes and laws in place. If those standards are not met, it's not something the Planning Commission can move forward. Commissioner Rhinhart stated that the State requires the applicant to look at other all other possibilities for locations in the appropriate zone before considering a zone change to accommodate a use. Sometimes the property will need to stay as it is because there is nothing else you can do with it. He pointed out that there are available parcels inside Umatilla County zoned for RV parks and the State's land planning rule is to protect farm ground.

Commissioner Wysocki stated that he knows of no land that has gone back to its previous state after the water right has been removed. Water is our scarcest commodity. When the water right went away, the productivity of this piece of land went with it. If the law was black and white, the Planning Commission would not be needed. In the long run, there may be other possible uses to consider. It's always the gray area issues they need to decide and each issue must be decided on its own merit. Mrs. Johnson stated that sometimes there are choices made by land owners, and things done on farmland that reduce acreage for farm crops and other types of farm uses. The resulting issues with acreage are self-imposed. For a land owner to come back after the fact and use those self-imposed situations to argue that the use should be changed, does not meet the standards of the rules. "Highest and best use" of a piece of property is not a land use term, it is a real estate term. It does not represent a standard that has to be met.

Opposition Testimony: Rhonda Villalobos, 29730 Stanfield Meadows Road, Hermiston, Oregon. Ms. Villalobos stated that she lives directly west of the proposed RV park. She has 95 acres and is a third

generation farmer. She and her husband struggle to keep the farm ground in the family. Whenever she sees a land zone change from Exclusive Farm Use, it bothers her. The area landscape has already changed with Space Age and the towers on the hill. She pointed out that Mr. Madison stated that it will be a 40 unit RV park, and she doesn't necessarily want 40 neighbors who may not have the knowledge of farming and farming practices. Sometimes they need to aerial spray, and she feels that could become an issue. She also has free range chickens that stay on her property and is concerned about additional people and dogs up and down the road. Commissioner Rhinhart asked what they farm on their property. Ms. Villalobos stated that, right now, they have an alfalfa. In the past they have farmed asparagus, corn and peas. She agrees that sometimes it's best just to leave a piece of land alone. She added that they have deer, rabbit, opossum and wolves in the area. Commissioner Green asked which parcel belongs to Ms. Villalobos. Chair Danforth noted that it is tax lot #300 on the map in the Commissioner's packet.

Public Agencies: Mrs. Johnson stated that she received some materials after the packets were distributed. The Commissioners were given the new paperwork prior to the hearing. First is an email with additional comments from Jon Jinings with the Department of Land Conservation and Development (DLCD). Second is a letter from the Brandon Seitz with City of Umatilla. Chair Danforth added the City of Umatilla letter as #11 and the email from DLCDC as #12 to the record.

Applicant Rebuttal: Kent & Laura Madison, 29299 Madison Road, Echo, Oregon. Mr. Madison stated that he intends to put a 4 foot high fence around the property so the RV park would not be accessed by Stanfield Meadows Road. He stated that, as a farmer, he understands Ms. Villalobos' concern about aerial application. He would try to mitigate her and other neighbors' concerns as much as possible.

Chair Danforth stated that she sympathizes with Mr. Madison. She appreciates the energy and effort put forth with the application and presentation. She stated that we have statewide planning goals and guidelines, OAR's and ORS's, and when those standards are not met, and DLCDC provides a letter stating the requirements are not met, it is something the she doesn't feel comfortable going against.

Mrs. Madison stated that they are not intending to be RV park developers. It's something they are experienced with because they use them. They see the need for newer, wider RV parks and this is a great location. They were trying to take the land and environment into consideration when developing the property by not building in the flood zone, etc. They are trying to be the best stewards of the piece of property they have. Mr. Madison stated that there is nothing they can do to meet the goals, especially now that DLCDC has said it's not a good idea. Mrs. Johnson stated that there are over 30 CUP opportunities and many LUD opportunities in the EFU Zone. There are a multitude of allowable uses that may provide an opportunity for another use of the land.

Chair Danforth closed the hearing for deliberation.

DELIBERATION

Commissioner Marlatt stated that he has over 30 years in the military and considers himself a rule-follower. But, in this case, he feels it's a matter of doing what's right rather than doing the right thing.

He believes that approving this application is the right thing to do. He feels it is not detracting from EFU practices and Mr. Madison makes a compelling argument. He stated that the traditional values of maintaining farm land is very important to him but he believes that turning this application down is not going to put the land back into production. Mrs. Johnson reminded the Commissioner's that their decision tonight will be used to make a recommendation to the Board of County Commissioners (BCC). Commissioner Wysocki asked what the next step will be. Mrs. Johnson stated that the BCC will have a hearing on December 20th to make a final decision.

Chair Danforth stated that the letter from DLCD supports the Staff Findings that the applicant has not met the criteria to make an exception. She does not think it is a good idea to set a precedent and is not in favor of approving this request. Commissioner Rhinhart and Commissioner Green agreed.

Commissioner Marlatt made a motion to recommend approval of the 3R Valve, LLC Goal 3 Exception Text Amendment #T-17-075, Comprehensive Plan Map Amendment #P-121-17 & Zoning Map Amendment #Z-312-17 to the Board of County Commissioners. The motion was seconded by Commissioner Wysocki. Motion denied with a vote of 3:2.

ADJOURNMENT

Chair Danforth adjourned the meeting at 8:11 p.m.

Respectfully submitted,

Tierney Dutcher
Administrative Assistant

Minutes adopted by the Planning Commission on March 22, 2018