

**MINUTES**  
**UMATILLA COUNTY PLANNING COMMISSION**  
**Meeting of Thursday, November 19, 2020, 6:30 PM**  
**Umatilla County Courthouse, 216 SE 4<sup>th</sup> Street, Pendleton, Oregon**

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**COMMISSIONERS**

**PRESENT:** Suni Danforth, Chair, Don Wysocki, Vice Chair, Molly Tucker Hasenbank, Tammie Williams, Hoot Royer, Tami Green, Jon Salter, Lyle Smith

**STAFF:** Bob Waldher, Planning Director; Megan Green, Planner/GIS; Tierney Cimmiyotti, Administrative Assistant

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*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 6:30 PM and read the Opening Statement.

**NEW HEARING**

**TYPE I LAND DIVISION, SUBDIVISION REQUEST #S-057-20: KMK LAND, LLC, APPLICANT/ JOY WULFF, OWNER.** The applicant requests approval to subdivide the property located on Assessor’s Map 4N 28 15, Tax Lot 702. The applicant’s proposed subdivision will create 8 lots of at least 4 acres in size. The Land Use standards applicable to the applicants’ request are found in Umatilla County Development Code 152.665, Type I Land Divisions.

Chair Danforth called for the Staff Report.

**STAFF REPORT**

Megan Green, Planner/ GIS, stated that the applicant, KMK Land LLC, requests approval of a Subdivision (Type I Land Division) of Tax Lot #702 located on Map 4N 28 15. Approval of the Magnolia Acres Subdivision would result in 8 subdivision lots of at least 4 acres in size. The property is located on the east side of State Highway 207 and south of Gettman Road, south of Hermiston City Limits.

The Standards of Approval are found in the Umatilla County Development Code (UCDC) Section 152.665, Type I Land Divisions. Standards for reviewing a Subdivision generally consist of complying with development code standards, Traffic Impact Analysis standards and subdivision plat requirements.

Ms. Green stated that notice of the applicant’s request and the public hearing was mailed on October 29, 2020 to the owners of properties located within 250 feet of the perimeter of Tax Lot #702. Notice was also published in the *East Oregonian* on November 7, 2020 notifying the

public of the applicants request before the Planning Commission on November 19, 2020. Both the Tentative Subdivision Plan and the draft Covenant, Conditions and Restrictions identify each new subdivision lot as a parcel. Because this proposal is for a subdivision, they shall be identified as lots. Both the applicant and the surveyor are aware of this, and that the final subdivision plan shall identify the newly created lots as such.

Ms. Green stated that the proposed Conditions of Approval address road improvement and access standards, including road naming and an Irrevocable Consent Agreement (ICA), fencing along irrigation canals and the survey and recording requirements with final approval accomplished through the recording of the final subdivision plat. The decision made by the Planning Commission is final unless timely appealed to the County Board of Commissioners.

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

### **TESTIMONY**

**Applicant Testimony:** Paul Barnett, (in attendance with Kristen Coller and Megan Barnett) KMK Land, LLC, 495 E Main Street, Hermiston, Oregon. Mr. Barnett stated that he is part of a group of three couples in Hermiston that are in the process of purchasing this property from local farmer, Joy Wulff. He stated that they are all excited to get the application processed and to start developing the lots.

Commissioner Wysocki asked if the property is zoned for farm use. Mr. Barnett said no. The zone is RR-4 which is Rural Residential with a 4 acre minimum parcel size. They plan to include a paved road down the middle of the subdivision with utilities running down the road. They will divide the water rights equally between the properties and have plans to install two gravity-fed irrigation systems to serve the lots. Mr. Barnett said they have contractors in line and hope to start as soon as possible.

Commissioner Wysocki asked how domestic water will be supplied to the properties. Mr. Barnett explained that each owner would be required to drill their own well or they could have a shared well system to support up to 3 properties. The septic will also be the buyer's responsibility but it shouldn't be an issue because the lots will be 4 acres in size with plenty of room to accommodate a new septic system.

Commissioner Royer asked if this property is in a critical groundwater area. Mr. Barnett said no. He added that according to the well report there appears to be a significant iron presence at 250-375 ft. However, he added that most wells go deeper and there is a lot of water available in the aquifers below. Senior Planner, Carol Johnson stated that the property is in a critical groundwater area but it does not have any effect on the exempt wells. It does have a lot to do with new water rights but there are no new water rights in terms of groundwater rights as part of

this application. The irrigation water that is used for this property is surface water from Hermiston Irrigation District (HID).

Commissioner Wysocki asked about livestock regulations for the future lots. Mr. Barnett stated that they will follow the County standards with additional restrictions written into the Covenants, Conditions and Restrictions (CCR's).

Commissioner Green asked if the property is being farmed at this time. Mr. Barnett stated that it has been farmed consistently over the last 30-40 years and currently has an alfalfa crop.

Commissioner Williams asked how long the property has been zoned RR-4. Ms. Johnson stated that it has been zoned RR-4 since the early 1980's when the Comprehensive Plan was acknowledged.

Chair Danforth asked for clarification about the access road and utility easement. Mr. Barnett stated that the access road easement is 60 feet wide and the utilities will be run within the proposed easement. They will also pave the road for the benefit of all the new owners.

Chair Danforth asked if the water rights are transferrable. Mr. Barnett stated that the water rights will be transferred to the new lot owners and they will be required to sell part of the water rights that will be covered by the house or other paved surfaces on the lot. They could transfer it out to other people in the district but due to the cost involved, the consensus of the new owners will likely be to retain those rights in order to maintain their pastures.

Commissioner Green asked for clarification about the distribution of water rights. Mr. Barnett said the plan is to install an underground gravity-fed pipeline and each land owner will have the chance to draw from that pipeline through the shared pump system.

Chair Danforth asked about the surrounding properties to the south. Mr. Barnett stated that the property in the southwest corner is owned and operated by Country Animal Hospital and they have a pasture in the rear. The 5 acre property located to the south in the center is used as a riding area with a trailer. Further south a property owner, Mr. McDonough, is trying to split his RR-4 land into 4 acre parcels in order to sell for development. Across the train tracks is RR-4 Zone land that has already been developed with houses.

**Public Agencies:** Annette Kirkpatrick, District Manager, Hermiston Irrigation District, 366 E Hurlburt Avenue, Hermiston, Oregon. Ms. Kirkpatrick stated that the property has full water rights on it. It is currently covered by 34 acres of water rights and she expects it to maintain at least 32 acres of water rights. She said they have a 6 acre foot duty that they can use and even if they irrigate a minimal 3 acre foot duty they will still be allowing close to 1 million gallons of water per season to percolate through the ground by way of their irrigation practices. She reiterated that the applicant is fully covered by surface water rights on this property.

Ms. Kirkpatrick explained that part of the approval process for HID requires the installation of appropriate fencing (approved by the district) on the edge of the districts right-of-way when property is being divided or built upon. The district is not imposing specific fencing height standards, but it will be each new property owner's responsibility to erect an appropriate fence.

**Opponent Testimony:** Jeff Newman, 29411 Feedville Road, Hermiston, Oregon. Mr. Newman stated that he owns tax lot #900 located to the southeast of the subject parcel. Mr. Newman asked if the access road will be gravel or paved. Ms. Green stated that Umatilla County only requires that the road be gravel, but the applicant does have plans to pave the access road.

Mr. Newman stated that his property was created when a larger parcel was divided and they only established a 30 foot easement to tax lot #1000 at that time. He said that he has worked numerous hours trying to figure out how to get a legal easement into his property. He asked if the applicant could include an easement that extends all the way through the property as part of this project because he does not have a legal easement from tax lot #1000 into his tax lot.

Chair Danforth asked Mr. Newman if he has reached out the County Planning Department regarding his concerns. Mr. Newman said no, he just received the public notice in the mail and is attending in response to the notice. Chair Danforth asked if Mr. Newman attended the hearing to speak in opposition of the project, or if he is trying to get an easement for his property. Mr. Newman said he is not trying to get himself an easement. He is trying to make sure that if this property gets subdivided again the development will have easements in place. Chair Danforth asked staff for clarification. Mrs. Johnson stated that the division Mr. Newman is referring to took place in the late 1990's and the Transportation System Plan standards that staff works with today were not in place at that time. The decision to approve that land division application predates Mrs. Johnson's time with the department so she did not have additional insight regarding the easement decisions made previously. Mr. Newman stated that he would like the newly created road to go clear through to the railroad easement to the east of the property in order to eliminate any future easement issues for surrounding property owners.

Mr. Newman stated that he believes this property development will create parcels that are subdivided into 4 acre landlocked lots, forcing developers to come all the way from Joseph Avenue to connect with city services. He believes approval of this permit will effectively put a stop to any development to the south of Hermiston because 11<sup>th</sup> Street, 9<sup>th</sup> Street, and 1<sup>st</sup> Street are the only roads that city sewer and water can use to access this property and future properties as they develop. Chair Danforth asked how Mr. Newman accesses his property currently. Mr. Newman stated that he has an easement from the Union Pacific Railroad to cross the tracks along the A Line Canal. Chair Danforth stated that this development will not affect his property or his access easement. Mr. Newman agreed that his property will not be affected by this project. He stated that the railroad is an absentee landowner and he only hears from them when they want to do something to his land. He is frustrated and feels that they do not acknowledge any landowner issues unless it directly affects them.

Commissioner Wysocki asked for clarification about Mr. Newman's comments regarding the extension of city water and sewer services. He stated that he is confused because these newly created lots will all have wells and septic systems. Mr. Newman stated that he is trying to make a point that if this parcel is divided into 4 acre lots, it puts an end to development in this area south of Hermiston all the way to Joseph Avenue. Chair Danforth argued that is not an entirely true statement. She pointed out that people are able to develop to the south, just without city services. This property is outside of the Urban Growth Boundary (UGB) and there are no plans at this time to annex into the city, so the properties will need to be served by wells and septic anyway. Mr. Newman agreed but added that he is trying to think ahead into the future.

Mr. Newman stated that he is concerned about 8 new wells in the area. He knows property owners in the area that have had to deepen their wells to over 300 feet. He is also concerned about the gravity-fed irrigation water. He does not believe a gravity-fed line will work when running the water uphill and believes that each property owner will need a power and water easement. Chair Danforth stated that the applicant included materials which addressed the possibility of a pressurized line if necessary.

**Opponent Testimony:** Ryan Barnes, 675 W Gettman Road, Hermiston, Oregon. Mr. Barnes was not present, but submitted written testimony via email:

"I am writing you to voice my opposition to the subdivision of tax lot 702 into 8 parcels to be sold off for development. I request at the expense of the proposed owners, a comprehensive study of the effects that this new development of houses will have on the surrounding water table levels.

With lack of adequate replenishment every spring from mountain snow packs the water levels around our area are at a critical level and before a community well or 8 individual wells be dug I would like to know if the water table can support such a high demand of draw that these 8 proposed houses are sure to demand. With an uncertainty of well irrigated lawn sizes and a potential number of pools being built it is critical to understand the impact that this will have before any requests to subdivide are granted. It is extremely expensive to have a well drilled deeper and this is not an expense myself or any other properties in this area would wish to endure in the coming years. Once this comprehensive study on the water levels around the development have been completed I would have no further objection to this development.

If this subdivision is granted, at the land owners expense, I would request that their community well NOT be dug into the same aquifer that my house currently draws off of. If they dig into the same aquifer I would request in writing a promise to pay for any future drilling and well/ pump work that my private well would require over the span of the next 15 years as a result of the water levels dropping. Based on the average consumption of a US family, it is expected that this development will draw upwards of One Million gallons of water per year. Thank you for your time."

Planning Staff noted that concerns regarding the proposed increase in well water usage have been addressed in the Final Findings & Conclusions, page 3, heading 24(a) Domestic Water.

**Applicant Rebuttal:** Paul Barnett, KMK Land, LLC, 495 E Main Street, Hermiston, Oregon. Mr. Barnett stated that he is following the guidelines for the County's RR-4 Zone and has addressed many of Mr. Newman's concerns in the application materials submitted to the County as part of this process. He believes this is a proper use for this property and it makes sense for him to develop more residences and provide opportunities for local families. He looks forward to moving ahead with this project.

Chair Danforth closed the hearing for deliberation.

### **DELIBERATION & DECISION**

Chair Danforth stated that she can understand Mr. Newman's concern regarding wells. Mrs. Johnson advised that the Commissioners make a Finding regarding the issue of exempt wells not being under the County Planning Department's authority and provide clarification that the Oregon Water Resources Department (OWRD) will oversee and authorize that piece of the project. As a result, the Commissioners declared that Umatilla County Planning Commission finds that exempt wells are not under the County's authority and are managed and under the authority of OWRD.

Chair Danforth pointed out that Precedent Condition #6 the County's Preliminary Findings & Conclusions requires that the applicant erect a 6 foot high chain link fence along the irrigation canal. However, HID will not require the 6 foot fence as part of this request. Therefore, it was decided that Precedent Condition #6 should be changed to reflect that the Umatilla Planning Commission finds that fencing proposed along the Maxwell Irrigation Canal shall be erected by the lot owners in agreement with requirements of the HID and included in the applicant's CCR's. Additionally, it was made clear that Precedent Condition #7 in the County's Preliminary Findings & Conclusions require the applicant to provide verification from Hermiston Irrigation District that irrigation standards have been met. This can be satisfied with a signature on the final subdivision plat.

Ms. Johnson proposed that the Planning Commission consider adding a condition to require the applicant to provide a final copy of the CCR's to County Planning. The Commissioners requested that staff change Precedent Condition #9 to Subsequent Condition #9, and renumber the rest of the conditions that follow, in sequence (#9 becomes a new Precedent Condition and the original #9 becomes Subsequent Condition #10, and #10 becomes #11, and #11 becomes #12). The Planning Commission consulted with staff and identified a need for changes to the Precedent Conditions to include the following:

Precedent Condition #6

Erect future fencing along the Maxwell Canal in agreement with HID recommendations and include fencing requirements in the CCR's. Confirmation of the agreement from the district must be provided to the County Planning Department.

**Precedent Condition #9**

Provide a copy of the Subdivision Covenants, Conditions and Restrictions confirming fencing requirements and fencing type for along Maxwell Canal.

Commissioner Williams made a motion to approve Land Division, Type I, Subdivision request #S-057-20, KMK Land LLC, Applicant, with the revisions to Precedent and Subsequent Conditions outlined above. In addition, Umatilla County Planning Commission finds that exempt wells are not under the County's authority and are managed and under the authority of OWRD. Commissioner Smith seconded the motion. Motion passed with a vote of 8:0.

**MINUTES**

Chair Danforth called for any corrections or additions to the minutes from the October 22, 2020 meeting. Commissioner Hasenbank moved to approve the minutes as written. Commissioner Green seconded the motion. Motion carried by consensus.

**ADJOURNMENT**

Chair Danforth adjourned the meeting at 7:57 p.m.

Respectfully submitted,

Tierney Cimmiyotti,  
Administrative Assistant

Minutes adopted by the Planning Commission on December 17, 2020.