<<<<<<<<DRAFT MINUTES>>>>>>>>

UMATILLA COUNTY BOARD OF COMMISSIONERS

Meeting of Tuesday, June 3, 2014
10:00 a.m., Milton-Freewater Public Library, Albee Room
Milton-Freewater, Oregon

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COMMISSIONERS PRESENT:	Bill Elfering (Chair), Larry Givens, George Murdock.
ABSENT:	None.
STAFF:	Tamra Mabbott, Doug Olsen, Connie Hendrickson.

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CALL TO ORDER:

Chairman Elfering called the meeting to order at 10:00 a.m. He identified the hearing and read the Opening Statement. He called for abstentions, bias, conflict of interest or declaration of exparte contact, there were none.

NEW HEARING:
APPEAL of Planning Commission decision to approve #LUD-163-13 for East End Rod & Gun Club. The application is to continue operation of a firearms training facility located at 54752 Milton Cemetery Road, approximately one mile east of Milton-Freewater on tax lot 1200 of Assessor's Map 5N 36. A public hearing was held before the Umatilla County Planning Commission on December 19, 2013 and continued to January 23, 2014. Planning Commission approved the application with conditions. The standards of review for the Land Use Permit are found in the Umatilla County Development Code, Section 152.617(II)(5) and 152.063.

Staff Report: Planning Director Tamra Mabbott said this application submitted by East End Rod & Gun Club was initially reviewed by planning staff and notice was provided to surrounding property owners within 750 feet of the shooting range. There was a request for a hearing before the Planning Commission. Two hearings were held and the Planning Commission approved the application with conditions. Both the applicant and the Rea family, who originally requested a hearing, filed an appeal of the Planning Commissions' decision. Land uses in EFU (Exclusive Farm Use) zones in Oregon are restrictive so planning staff chose to process this application as a Land Use Decision. Initially staff included the standards in the Umatilla County Development Code 152.615 for a conditional use permit but counsel for the applicant said those should be eliminated and Mrs. Mabbott agreed.

Mrs. Mabbott referred to a map showing the location of the gun club and identified the property owner notice area. To summarize, Mrs. Mabbott said the applicant agreed with the Planning Commissions' decision but did not agree with some of the conditions of

approval. The attorney for the applicant sent a letter to the Board of Commissioners asking them to remove two conditions. Condition number 4 is for an annual review by county Code Enforcement to ensure compliance with conditions of approval and pay the $50.00 review fee. Staff disagrees with removing condition number 4. Condition number 11 would limit the membership of the gun club to 1000. The current card-lock security system at the gun club has a numbering capacity of 1000. The Planning Commission decided to use that number for the maximum number of members the gun club could have. That issue is a matter of policy and staff does not have a recommendation with regard to that matter.

Mrs. Mabbott continued saying that the applicant requested some modification on condition number 5, which is the hours of operation, and they would like some modification on condition number 7, relative to using the "Black Flag" safety procedure. Condition number 12 prohibits the use of alcohol at all times on the property and the applicant would like some reasonable modification of that, as well. Commissioner Elfering asked if the conditions could be reviewed, changed or removed once they are imposed and Mrs. Mabbott answered that unless it were to go to LUBA (Land Use Board of Appeals) in order to change a condition it would have to go back to the Board of Commissioners for another hearing.

Introductions: Commissioner Elfering stated that he had neglected to make introductions at the beginning of the hearing so he introduced himself, Commissioner Larry Givens, Commissioner George Murdock and County Counsel Doug Olsen. He asked Mrs. Mabbott to introduce her staff. She introduced Connie Hendrickson who was taking notes, Planner Shane Finck and honorary page for the day, Thomas Mabbott.

Commissioner Givens acknowledged the new exhibits submitted after the Board received their packets and moved to enter them into the record. Commissioner Murdock seconded the motion and it carried.

Proponent testimony: Michael Robinson, 1120 NW Couch St., Tenth Floor, Portland, OR 97209, Attorney for East End Rod & Gun Club. Mr. Robinson distributed two documents to the Commissioners and explained that one was a copy of ORS197.770 which addressed firearms facilities and the other was affidavits and letters stating that East End Rod & Gun Club was in operation as of September 9, 1995. He said he would explain how the Gun Club met the burden of proof for the application and satisfied the criteria.

Mr. Robinson described the 85-acre area where the gun club is located within a 420 parcel. He said the gun club initially wanted to expand the area where they operate but modified their original application before it went to the Planning Commission. They are now asking for is a determination that they satisfy the criteria of 197.770, the state statute which allows firearms training facilities to operate on Exclusive Farm Use zoned ground and approval to construct several small structures, most of which would be open buildings, on the existing site.

Mr. Robinson said normal uses in the EFU zoned areas are found in ORS 215.283 and they are a Sub 1 use, which is permitted, or a Sub 2 use, which requires a conditional use permit. If this land use request were for a conditional use permit there would be more discretion granted to the Board in deciding whether or not to approve it. The matter before the Board is completely different. The application for a firearms training facility was enacted by the legislature as a stand-alone statute (197.770) and there are no standards for compatibility or impact. The East End Rod and Gun Club will accept reasonable conditions of approval the Board chooses to place on this land use request.

Mr. Robinson continued, saying the first point they needed to show was that the gun club was in operation as of September 9, 1995. If that is found to be true, state statute expressly says that the facility shall be allowed to continue. The evidence the gun club placed before the Planning Commission, and now before the Board of Commissioners, demonstrates that the standard has been met. The second thing to show was that the gun club facility runs training courses to the standards required in one of three ways: for law enforcement personnel, for the Oregon Department of Fish and Wildlife, or by nationally recognized programs for shooting matches, target shooting and safety courses through the National Rifle Association (NRA). The evidence in the record that was before the staff, the Planning Commission and now the Board shows that all of those things have occurred. The affidavits presented to the Board show that the facility was in operation as of September 9, 1995 and was offering training certification required by the statute.

Mr. Robinson said the administrative rules adopted by the Oregon Land Conservation and Development Commission (LCDC) guide approval of firearms training facilities in EFU zones. One rule states that firearms training facilities may be maintained, expanded or enhanced on the same tract. The gun club is proposing an enhancement on the same leased area on the same tract. That request complies with the administrative rule adopted by LCDC.

With regard to their appeal, Mr. Robinson said there are some conditions placed by the Planning Commission they would like for the Board to delete and some others to modify. They would also like to strike the findings in the decision that referred to the gun club application as a conditional use permit.

Mr. Robinson said condition of approval number 4 was for an annual review by Code Enforcement. The gun club is happy to comply with conditions placed on their application but a written document stating their compliance with regard to conditions and with land use regulations becomes a land use decision. That would make it possible for a letter from Code Enforcement to trigger another series of land use proceedings. The county code allows ample discretion to ensure that the conditions are adhered to and enforced and the gun club agrees with that. He said he wanted to be clear that their objection was not to Code Enforcement or abiding by the conditions.

The next issue Mr. Robinson raised was with condition of approval number 5 which had to do with hours of operation. The way the condition was worded, it read that no one could be on the range before 8:00 a.m. for maintenance, etc. They would like for the

wording to clarify that firearms could not be discharged before 8:00 a.m. They also wanted make sure that night time events for law enforcement training certification were not subject to the hours of firearms discharge. It is important for first responders to have a place to train and sometimes that training must take place at night.

Mr. Robinson said that condition of approval number 7 had to do with the black flag safety procedure, which is a cease-fire for the gun club members. It is used when farmers are working in a field down range from shooting. He said it is the opinion of the gun club that there may be other ways to also help ensure the safety of the neighboring property owners so they were asking that the condition be modified so that the black flag procedure or other similar notifications may be used. There may be a more affective way of providing the cease-fire notice. Their goal is to do the best they can to enhance safety.

Mr. Robinson said that condition of approval number 11 placed by the Planning Commission capped the gun club membership at 1000 people. Testimony was presented at the Planning Commission hearing stating that the gun club does not ever have close to 1000 people at the club at any one time. The club by-laws provide that any citizen of the United States over the age of 18 can become a member. Their goal is to have more members so having a cap on the membership is a problem. They believe it would be better to look at decisions that govern impact from members on the range and how they behave while on the range, but not to limit the membership itself. They would like for the Board to consider removing that condition.

The last condition Mr. Robinson addressed was condition number12, which says no alcohol will be allowed on the range, no permanent on-site commercial food is allowed and no on-site restaurant is allowed, although catering for special events is allowed. They agree that consuming alcohol while shooting a gun is not a good idea. They would like for the Board to consider rewording the condition to say" the consumption of alcoholic beverages is allowed when shooting is not occurring. This would limit the consumption of alcohol to either outside of the hours of the discharge of firearms or during cease-fire procedures. Mr. Robinson said this was a policy issue but they were requesting for the Board to focus on the impacts of the club and not conditions trying to regulate them.

Mr. Robinson gave the Board a copy of a letter from Janice Copple, who works for the Oregon Department of Fish and Wildlife. This letter states that Andy Millar was a certified trainer as of January 12, 1994. Another letter that will be submitted states that Mr. Millar provided certification to an 11 year-old young man in 1994 at the gun club. Commissioner Givens moved that the letter from Janice Copple dated June 2, 2014, sent to Andy Millar, be entered into the record. Commissioner Murdock seconded the motion and it carried.

Mr. Robinson referred to a letter from Carrie Reynolds, 52236 Hwy 332, Milton-Freewater, OR 97862. The letter, dated June 2, 2014, stated that she was enrolled in a firearms safety course in 1994 and the instruction was provided by Andy Millar and Paul Petrie at the East End Rod & Gun Club's current location.

Mr. Robinson gave the Commissioners a copy of a letter from Janet Anderson. He said that letter described her perception of noise and he would let the letter speak for itself.

Mr. Robinson gave the Commissioners a copy of a letter from Kelly Peterson who is opposed to the application. He said he would like to address three issues in the letter. The letter states that their farm is close enough to the range that the gunshots can be heard. Mr. Robinson noted that the gun club is required to abide by NRA noise regulations and they intend to meet that requirement. Mr. Robinson also pointed out ORS 467.731, which protects firearms training facilities from civil liability for shooting between the hours of 7 a.m. and 10 p.m. and for law enforcement training, as long as they are operating according to normal standards.

Mr. Robinson said Kelly Peterson's letter stated that the gun club wanted to operate with little restriction. He said he appreciated the concern expressed but pointed out that there are 12 conditions now and if the Board agreed with their appeal there would be 10 conditions. These conditions govern safety, hours of operation, noise, lighting and other issues to which the gun club agreed to abide by.

Another issue raised by Kelly Peterson said the gun club seemed to have little or no concern for fact they are located in an EFU zone. Mr. Robinson said he appreciated the comments and that is was common for people to be protective of EFU zones. But the state legislature provided for this type of use to be allowed on EFU zoned ground.

Mr. Robinson said another letter received, submitted by Lawrence Ranches, addressed concerns with regard to safety. As had already been talked about, there were a number of conditions of approval regarding safety. One concern expressed in the letter had to do with the evolving nature of the gun club. He reminded the Board that the Administrative Rule allows the gun club to be expanded, enhanced or modified on the same tract. Susan Lawrence Talbot, who wrote the letter, added her concerns with regard to traffic. Mr. Robinson said that the record reflected that the county public works director had no adverse comment regarding this application. One of the two precedent conditions required the gun club to obtain an access permit, which they have done, although it was not a requirement either in the county code or in state law. They believe all the possible traffic issues have been addressed.

Mr. Robinson said that the Rea's asked the Planning Commission to deny this application but the Planning Commission found in favor of the application based on substantial evidence showing that the requirements of the state Oregon State Statute and the Oregon Administrative Rule had been met. They are asking that the Board concur with the Planning Commission with the exception of the appeal points by the gun club.

Mr. Robinson told the Commissioners that there is only one recorded Oregon Court of Appeals case which deals expressly with the application for a gun club and that is called "Citizens for Responsibility vs. Lane County". That is the gold standard for firearms training facilities in Oregon. The court has made it clear that as long as some evidence can be provided that training and education was occurring on or before September 9,

1995, the facility meets the statutory requirements. Presenting certificates was not a requirement but the gun club does have evidence that certificates were granted.

Commissioner Givens made a motion for the letter from Janet Anderson to be entered into the record. Commissioner Murdock seconded the motion and it carried.

Chairman Elfering asked Mr. Robinson where a firearms training facility is defined in the statute or the rules. Mr. Robinson told him that it was inherent in the statute itself and that was what the Court of Appeals said in the "Citizens for Responsibility" case. He then read from ORS 197.770 (2). Commissioner Elfering asked about the language concerning the expansion or enhancement of the gun club, etc. Mr. Robinson said it was found in OAR 660.033.13072, which is the list of uses in EFU zones and he read from the rule.

Chairman Elfering asked for clarification regarding the withdrawal of the request for the 35-acre expansion. Mr. Robinson said that gun club President Verl Pressnall would be addressing that topic during his testimony.

Proponent testimony: Verl Pressnall, 524 N. Elizabeth Apt. 5, Milton-Freewater, OR 97862. Mr. Pressnall identified himself as the current President of the gun club and said the club had been looking into establishing an area for trap and skeet shooting in order to work with 4-H programs. After further investigation, the proposed 35-acre expansion area did not meet the American Trap Association regulations and it would have been costly to bring the ground up to the required standards along with the cost of purchasing the equipment for the trap and skeet programs. Due to these circumstances, the expansion was no longer being considered.

Commissioner Givens asked Mr. Pressnall to indicate the area on the map where the shooting occurred and the direction of the shots. Mr. Pressnall pointed out the areas and said they shoot to the south and to the east. He described the slope of the ground and said they have placed berm walls for added safety and security. The shotguns are fired to the west and it is approximately 100 yards to the edge of the property. There is a slight chance of shot fall onto neighboring property so if a farmer is working in that area, one of their range safety officers puts up the black flag and shuts down as much of the range as is necessary to ensure safety. If the entire range has to be shut down, the black flag is placed on the gate and it is posted on their website, as well. Commissioner Givens asked Mr. Pressnall if there were any shots being fired toward the north. Mr. Pressnall said there was no shooting in that direction. He added that long guns are fired to the south where they have 800-900 yards of distance.

Commissioner Givens asked what crop was farmed to the west and the south and Mr. Pressnall said it was dry land wheat. Commissioner Givens asked about an area at the far end of the range to the south and if it was being farmed. Mr. Pressnall referred to a map and said that area was leased to a local farmer who spent a limited amount of time in that field. The farmer has access through the range to get his equipment in and out. Mr. Pressnall added that when farming was going to occur in that field, the farmer contacted him and the black flag was put up before he got to his field. Commissioner Givens asked

about the difference in elevation from the east slope on the property line to the range. Mr. Pressnall again referred to a map and said the highest point of the hill is 90 feet higher than where they start shooting.

Chairman Elfering asked about the black flag process and if there were people on the range at all times who could invoke it. Mr. Pressnall said anyone on the range could invoke the black flag system. The members are required to attend an orientation, which explains how the black flag system works; where it is used, how it is used and where it is located.

Proponent testimony: Janet Anderson, 85569 Tum A Lum, Milton-Freewater, OR 97862. Ms. Anderson said her testimony was in response to the Rea's comment about the noise coming from the gun club. She read from her written statement saying that she and her husband had driven to Dennis Rea's property during an event held at the club called "First Shots" and were unable to hear any sounds from the club while parked on the road near the farm. They drove in the direction of the club and noticed a hill located between the Rea property and the club, Her husband said the hill would reduce the sounds that might come from the gun club. She discovered that shooting had been occurring during the time they had been at the Rea's and while they were driving but that neither she nor her husband were able to hear any gun shots until they drove into the parking area of the gun club and parked.

Proponent testimony: Douglas Jones, 77 Wainwright Drive, Walla Walla, WA 99362. Mr. Jones introduced himself as the Senior Fire Instructor for the Department of Veterans Affairs in Walla Walla. He said in the last three years their training requirements increased 8-fold. At that time, their training was being conducted at the Walla Walla State Penitentiary. The training was conducted in two training evolutions per year but with the increased requirements they had to find other facilities at which to train. Mr. Jones said he had been to many different training facilities in the Northwest and the East End Rod & Gun Club was superior to all of them. It has the capacity for multiple types of training and their safety record is outstanding.

Proponent testimony: Ben Sauve, 2251 S. Howard Street, Walla Walla, WA 99362. Mr. Sauve said the range allows him to practice with his firearms and safely engage in shooting sports. Mr. Suave said he works at the Walla Walla State Penitentiary and it is important for him to develop his proficiency with firearms. He added that he is introducing his children to shooting and the gun club is the safest place to take them to learn.

Proponent testimony: William Saeger, 125 Saeger Street, Milton-Freewater, OR 97862. Mr. Saeger said the East End Rod & Gun Club provides a safe, controlled environment for firearms training and both he and his wife use the facility. The club installed berms on the north side of the rifle range that limit noise toward the Rea property. He asked the Board to recognize the need for this recreational facility.

Proponent testimony: Suni Danforth, 225 Maple Ave, Milton-Freewater, OR 97862. Mrs. Danforth said she is on the Umatilla County Planning Commission and received a packet before the Planning Commission hearing. She reviewed and researched the Oregon Administrative Rule, the Oregon Revised Statute, etc. and found nothing that prohibited the club from operating. Mrs. Danforth added that the range has been in that location for many years and there is no record of any complaints by the neighboring properties to the county or to past presidents. She added that as funds become available, the gun club makes improvements with noise abatement and safety. Members are required to comply with the rules and firearms safety regulations of the club or their membership is revoked.

Proponent testimony: Stacy Alexander, 1325 Melrose St. Walla Walla, WA 99362. Mrs. Alexander said she is gun club member, a safety officer and a certified NRA instructor. She added that she is a facilitator for the Walla Walla chapter of A Girl and a Gun shooting league. That group provides safe training and firearms education in a safe environment. She said she supports the gun club and that it is important for women to have a place where they feel comfortable learning to shoot.

Commissioner Murdock pointed out for the record that both Commissioner Lee and Commissioner Danforth recused themselves from participating in the Planning Commissioner hearing due to personal involvement with the applicant and/or opponent.

Proponent testimony: Larry Zalaznik, 1321 Reser Road, Walla Walla WA 99362. Mr. Zalaznik said he is a gun club member and manages the 5-stand shotgun game for East End Rod & Gun Club. He said he was active in the club in the early 1990's when they organized shotgun shooting on the range. He requested for the Board of Commissioners to allow alcohol consumption during non-shooting hours. The volunteers help by putting away the equipment after they are finished shooting and they like to make it a social time and have a beer together. Commissioner Givens asked how alcohol use was monitored. Mr. Zalaznik said everyone using the facility looks out for that.

Proponent testimony: Charles Danforth, 225 Maple Ave. Milton-Freewater, OR 97862. Mr. Danforth said the club placed a 20-foot wall of hay bales on the range in a recent improvement for noise mitigation and increased safety. The pistol shooting area has 5 lanes divided by the hay bales stacked 8 feet high. Mr. Danforth offered photographs of the range to the Commissioners showing improvements that have been made. He added that the black flag is difficult to see at night. The club would like to use additional safety methods such as the installation of lighting so if a farmer is working at night they can see that the range is in operation.

Commissioner Givens made a motion to enter the photos submitted by Mr. Danforth into the record and Commissioner Murdock seconded it. The motion carried.

Opponent testimony: Patrick Gregg, 222 SE Dorion, Pendleton, OR 97801, of the law firm Corey, Byler & Rew, Attorney for the Rea Family and H.T. Rea Farming Corp. Mr. Gregg said their appeal requested for the Board of Commissioners to reverse the decision

of the Planning Commission and find that the burden of proof for ORS 197.770 had not been met. He said there was not sufficient evidence to prove the club was in operation on September 9, 1995.

Mr. Gregg said that under ORS 197.770 there are three avenues for demonstrating that a gun club is a firearms training facility: training for law enforcement with issuance of a certificate, Hunter Safety classes through the Oregon Department of Fish and Wildlife (ODF&W) or through nationally recognized programs that promote shooting sports. He said there is no evidence in the record proving that training for law enforcement was taking place on September 9, 1995 and no certification for ODF&W Hunter Safety courses. The signed affidavits submitted by the gun club members state that members have used the gun club at all times since 1994 and that there was intent on behalf of the gun club to provide training courses and issue certifications. The record does not show that was done. He read from page 410 of the Umatilla County Development Code which stated that the burden of proof was on the proponent. Mr. Gregg said Nathan Rea submitted an affidavit stating that he took a Hunter Safety class in 1999 from Andy Millar but the class was held in a different location.

Mr. Gregg said the case known as Citizens for Responsibility vs. Lane County dealt with firearms training facilities but the matter being decided in that case was not whether the club met the criteria for 197.770 but whether or not their activity had stopped long enough for them to lose their certification.

Mr. Gregg said with regard to the issue of expansion of the gun club, OAR 660-33-120 (2)R states that counties may prescribe additional limitations and requirements to meet local concerns. There is only one reference with regard to gun facilities in the UCDC, which is essentially the same as ORS 197.770. He said he had not found a provision in the Code that allowed for expansion or growth of a facility.

Mr. Gregg submitted the Umatilla County Tax Assessor's Report showing that the Vonderahe property where the gun club is located is in farm deferral. He said the use of the property as a gun club does not meet the requirements for farm deferral.

Mr. Gregg said a reduction in the conditions placed on the permit by the Planning Commission would have a negative impact on neighboring property owners. There is a provision in the county code that says the county is permitted to impose conditions if it is necessary to prevent circumstances that may be adverse to the public safety, health or welfare. Mr. Gregg said his client disagrees with any modifications of the conditions and ask for the current conditions to remain in place.

Commissioner Givens asked Mr. Gregg to clarify his statement that no certificates had been issued for gun club courses that were taken. Mr. Gregg said there were no certificates in the record. Mr. Givens referred to a letter received today that had a certificate number and Mr. Gregg said that was a Hunter Safety I.D. number.

Opponent testimony: Nathan Rea, 84894 Hood Road, Milton-Freewater, OR 97862. Mr. Rea said the question that had to be answered was if the East End Rod & Gun Club existed as required by the statute as of September 9, 1995 and did it exist on the current 85-acre property. Mr. Rea said they did not believe that it did and that is why they were asking that the land use application be denied. He said there was no certificate from the East End Rod & Gun Club showing that anyone received training prior to 1995. He added that there was no evidence in the record indicating that law enforcement training, sanctioned by a national body, was occurring in 1995 or before.

Mr. Rea said his sworn affidavit, which was made a part of the record, says that he received training from Andy Millar in 1999 at a different location. The classes were held in a building in Milton-Freewater and the shooting portion of the course took place in Umapine. Mr. Rea said the gun club responded to his affidavit by saying that the field training had been moved because of spring rains.

Mr. Rea referred to aerial photographs showing the club and surrounding farmland. He pointed out areas on a photograph from 1994 saying that the gun club was not located where they said they were, but in a different location on the property. He referred to another photograph from 2000 where evidence of activity on the ground could be seen. He said Andy Millar's affidavit was the key evidence the gun club presented regarding the uses in 1995. Events mentioned by the East End Rod & Gun Club prior to September 9, 1995 were 5-stand shoots in the early spring but the affidavit did not state that the 5-stand shoots were occurring on the Vonherahe property. The affidavit also stated that beginning in 1993 the club was conducting two classes on the property but that activity is not evidenced in the photographs.

Mr. Rea referred to the affidavits from the NRA's members. Those affidavits state the members have used the club at all times since its beginning in 1994 but it does not state where the use took place. He said the East End Rod & Gun Club was established in the 1940's but was held in different locations.

Mr. Rea said the gun club is an industrious operation that allows sniper and swat training and training for municipal police forces from communities outside the local area. He referred to a question asked earlier regarding where the shot goes and showed maps where the firing took place. He described the areas used for the different types of shooting, also describing the landscape in each area. He pointed out where the boundary lines of adjacent property owners were located.

Mr. Rea described his families' property, the crops that were currently being farmed and how often and at what times those fields were irrigated. He said the harvesting of some of those crops was labor intensive and while their fields were not visible from the range they were still in the line of fire. Mr. Rea stated that his family had not been given the phone number to call to make a request for the black flag to be raised. He added that the hay bales the club had stacked for noise abatement were not helping very much.

Mr. Rea said the gun club has grown significantly beyond what they were in 1995 and now seeks to retroactively approve all of the growth. If the Commissioners agree with this application they should leave the no condition for expansion in place. Mr. Rea said he and his family would like for the Commissioners to make a decision to find a way to ease the East End Rod and Gun Club out of the area.

Commissioner Givens made a motion for the Assessors Tax Summary report on the Vonderahe property to be entered into the record. Commissioner Murdock seconded the motion and it carried.

Commissioner Givens made a motion for the oversized photos submitted by Mr. Rea to be entered into the record. Commissioner Murdock seconded the motion and it carried.

Commissioner Givens asked Mr. Rea why the situation came to this point before concerns were expressed. Mr. Rea said it was not the duty of his family to patrol land use, it is the county's responsibility. He added that his family runs a farming business and this was the first public opportunity they have had to ague this issue. Commissioner Givens noted that others in the county have not had any problem calling the Commissioners to complain when there is something they don't like. He added that Mr. Rea knew the process with regard to filing complaints and asked why he waited until now to bring it up. He added that he questioned the validity of Mr. Rea's claims. Mr. Rea said the gun club was a noisy, dangerous facility, which compromises their land value and the safety of their employees. He said their claims are valid. Chairman Elfering asked Mr. Rea how long he had lived on that property and he answered that he had been raised there.

Chairman Elfering recessed the meeting until 1:15 p.m.

Upon reconvening the meeting, Chairman Elfering told those present that he, Commissioner Givens and Commissioner Murdock had taken a tour in March of this year at the north end of the county to review county roads in that area. As they passed the property where the East End Rod & Gun Club was located they had seen the range. He added that if his colleagues thought it would be helpful, they could request a continuance to give them time to re-visit the site. Commissioner Givens said he lived in the Milton-Freewater area was familiar with that area.

Opponent testimony: Dennis Rea, 84224 Spofford Road, Milton-Freewater, OR 97862. Mr. Rea stated that he was a third generation farmer of their land. He clarified that he and his family were gun owners and users and some were sportsmen. He said that after hearing testimony at the previous hearings he does not think the gun club met the burden of proof for meeting the requirements of 197.770. He referred to the noise from the club saying that he and his family could hear gunshots from inside and outside their home which is 1.3 miles from the range. Some of the suppliers they do business with have expressed concern about having to be close to a gun range while conducting business.

Opponent testimony: Sam Lefore, 54103 Lefore Road, Milton-Freewater, OR 97862. Mr. Lefore said his property is within one and one half miles from the gun range and his

first concern was the noise from the club, which he can hear inside and outside of his home. He added that another concern was the increased traffic on the road and the dust created by that traffic which was harmful to the peaches he grew. It was his opinion that the gun club should be in a different location away from farmland.

Commissioner Givens asked Mr. Lefore to identify his orchard that was closest to the gun range. He pointed out an area that was on both sides of Grant and Lefore Roads. Commissioner Givens asked Mr. Lefore which crops he farmed besides peaches. He answered that he grew mainly apples and some cherries. He added the dust that gets on the leaves of the fruit trees caused red mites to breed and that was harmful their crops. Commissioner Givens asked Mr. Lefore if the other farms generate dust and he said they did. But the dust from the road was still a big problem.

Proponent testimony: Bill Timmermann, 81368 Coopers Road, Milton-Freewater, OR 97862. Mr. Timmermann said he had been shooting since he was young. The shotgun range is 100 yards from the boundary of the adjacent property. He said the shot travels up and is opposed by winds that makes it fall short. He added that no qualified gunman ever shoots where the round will go over the horizon.

Opponent testimony: Susan Lawrence Talbot, 738 Country Club Drive, Yakima, WA 98901. Ms. Talbot, representing Lawrence Ranches, identified their local property address as 54626 Walla Walla River Road, Milton-Freewater, OR 97862 and pointed out the property on the map. She said they are concerned about the increased activity at the gun club and while she said she understood the need for people to have a place to train with their weapons, the current location was not the right location. She pointed out the rifle range and said the guns shoot in the direction of their property. She said she knows most people are careful when shooting but it is possible for bullets to go astray.

Ms. Talbot said the black flag system is a cumbersome system for farmers, as it requires them to call the gun club whenever they are going to be in the field. The sound of gunfire is of great concern for them. Living and working with that sound is disruptive and disturbing. Ms. Talbot said having the gun club close by affects their safety, will change the character of the area and decrease their property values.

Opponent testimony: Christine Carter, 623 S. 11th Ave., Yakima, WA 98901. Ms. Carter said she enjoyed visiting this area while she was growing up. She said the area would be a great place to retire because of the beautiful view. She urged the Commissioners to think about the long-term implications of having a gun club in that location.

Opponent testimony: Sherry Schultz, 38710 Hamilton Road, Long Creek, OR 97856. Ms. Schultz confirmed that she had submitted a letter in opposition to the gun club. She identified her property on the map and said she feels directly impacted by the rifle range. She is concerned about her safety that of her family when they are working in the field. She said she was unaware of the black flag process. Commissioner Elfering asked if there was a residence on the property and Mr. Schultz answered that there was not.

Opponent testimony: Burton Kinman, 2115 Sudbury Road, Walla Walla, WA 99362. Mr. Kinman identified his property on the map said his family had been farming there for many years. He said he was just now coming forward because he recently became aware of this facility. Through discussion with family members he learned that trap shooting was occurring on the Vonderahe property. He thought the amount of trap shooting had increased, but since learned that it was a gun club and there were other shooting activities held there. He said his business is being affected financially because of his farms' proximity to the gun club. He said this was not the gun club vs. the Rea family. The Rea's stepped up and are representing him and other landowners. Chairman Elfering asked if there was a residence on his property and Mr. Burton said there was not.

Opponent testimony: Cecil Zerba, mailing address, P.O. Box 682 Milton-Freewater, OR 97862; physical address 83805 Winesap Road, Milton-Freewater, OR 97862. Mr. Zerba said they own property planted in vineyards, which borders the Vonderahe property on the east side. He said when they first purchased the property there was little activity on the land where the gun club is located. There are between five and ten people who work the vineyard year round and they have concerns about their safety. He said he was a gun owner and was in favor of what the gun club did but in his opinion, that was the wrong location for the club.

Proponent testimony: Robert Purefoy, P. O. Box 1929, Walla Walla WA 99362. Mr. Purefoy said the issue of the property taxes on the Vonderahe property was misleading and questioned why it was mentioned. He told the Commissioners that in order to get an appreciation of the gun club and all the improvements that have been made, it would be best to see the facility on the inside and not just from the road. He said it was his opinion that alcohol should not be allowed at the club.

Opponent testimony: Joe Frazier, 1135 Valley Vista, Walla Walla, WA 99362. Mr. Frazier had to leave early and asked that someone read his written testimony to the Commissioners. Mrs. Mabbott read Mr. Frazier's letter of testimony into the record. Mr. Frazier's letter stated that he was opposed to the expansion of the gun club and wanted to protect the value of his property in the urban growth area of Milton-Freewater. The letter also stated that he had done some work on the Rea family property and heard the constant noise of gunfire coming from the club. The letter went on to state that property development must respect guidelines set forth in the permitting process and that Mr. Frazier did not see this respect reflected in the desires of the gun club and asked that this application be denied.

Commissioner Murdock made a motion to enter the letter from Joe Frazier into the record. Commissioner Givens seconded the motion and it carried.

Opponent testimony: Herb March, 81044 Couse Creek Road, Milton-Freewater, OR 97862. Mr. March said he farms land south of the gun club and identified the multiple properties on the map. He said he employees workers in the fields and does not like that

they have to work on the down range side of the gun club. He added that the chance of a stray bullet hitting one of the workers was not great but any chance was too much.

Opponent testimony: Les Peterson, 1450 Island Road, Walla Walla, WA 99362. Mr. Peterson said he is a neighboring landowner and identified his property on the map. He said he was in the military and had been a range officer and seen some bad things. He added that the decisions made today would affect future generations.

Mr. March continued saying that more than just safety was involved; economics were also a concern. Having a gun range next door to a property will devalue that property and he said he said he was opposed to this gun club in its current location. The range has been in existence for years and he had come forward to speak at this meeting because it had become a problem.

Chairman Elfering said there had been a question with regard to procedure from this point of the hearing forward about rebuttal testimony. County Counsel Doug Olsen stated that since there were cross appeals, both sides have an opportunity for rebuttal on their part of the appeal issue. There was some discussion between Mr. Robinson, Mr. Gregg and Mr. Olsen to clarify what the rebuttal testimony could include.

Opponent rebuttal testimony: Patrick Gregg, Attorney for the Rea family said the focus on the decision to be made today was with regard to the legal criteria and whether or not the requirements of 197.770 had been met. He said there was no evidence in the record of NRA sponsored events or law enforcement training prior to September 9, 1995. The evidence presented had to do with Hunter Safety. There had been no testimony by anyone who actually had a training class prior to the 1995 date. He added that the evidence presented had not met the burden of proof and for that reason they were requesting that the application be denied.

Mr. Gregg told the Commissioners that if they found that the burden of proof for ORS 197.770 had been met, because the county code is silent on the right to expand, he and his clients requested that the club not be allowed to expand.

Proponent rebuttal testimony: Mike Robinson, Attorney for East End Rod & Gun Club said he had several points to rebut after Mr. Pressnall and the owner of the Vonderahe property had a chance to speak.

Mr. Pressnall said the photographs during the early years of the gun club did not show much disturbance on the soil because there were not very many members at the time and not a lot of driving on the grounds, but there was equipment on the range. The roads on the range were not graveled until 2002.

Mr. Pressnall identified the area on the photograph where the Cowboy Action and pistol shooting occurs. He said the only rifles being shot in that area use pistol caliber ammunition such as .357, .44 or .45 Colt black powder rounds. Shooting of jacketed ammunition is not allowed on that range at all. He referred to photos and identified the

areas where the angle of the shooting has been redirected. He pointed out the area where the recent improvement of a back wall of thick hay bales has been installed. He said they were constantly improving, trying to be a good steward of the land and cooperate with the neighbors.

Mr. Pressnall said they have taken decibel readings around the range and noise can be heard. They are unable to get a reading past the hay bales because the ambient noise is high. After the last Planning Commission hearing the club checked into having a professional noise study completed but the fee would be $30,000.00 making it cost prohibitive.

Mr. Pressnall said the black flag system is not the responsibility of those farming the land but some of the farmers do call to alert the club when they are going to be working in an adjacent field. The club members understand the procedure and they take the responsibility of putting the black flag up if there is any kind of activity down range whether it is a farmer working or an animal crossing the land.

Mr. Pressnall said when grant applications are submitted the club is required to send notices to land owners that may potentially be impacted by what is done on the adjoining ground. Those grant applications are usually with ODF&W and also require impact studies. There was never a time when the surrounding property owners had not signed off for range improvements. The most recent grant was three years ago for the replacement of the gate and the Rea farm signed off on that improvement.

Mr. Pressnall said there is only one person who is allowed to train with a 50-caliber rifle and the club had to certify him to allow that training. He was a Marine sniper and currently works for the Walla Walla City Police force and the Walla Walla State Penitentiary. Mr. Pressnall identified the area where he is allowed to shoot that rifle.

Mr. Pressnall said the club has been working on the noise issue. They would like to install a baffle system on the rifle range but lack the funding at this time. He referred to a range in Albany Oregon that installed a baffle system. Homes are located between 150 – 200 yards away, and because the members shoot through the baffle systems there is virtually no noise from the gun fire in the area of the homes. He added that noise control is an ongoing process.

Mr. Pressnall said there did not seem to be a negative impact on wildlife so far. Shooting animals on the range is not allowed or tolerated. When any kind of animal is seen on the range the shooting stops until the animal is out of harm's way.

Mr. Pressnall said Hunter Safety cards were not dated until 2002. He referred to a letter from Cary Reynolds who had taken the hunter safety course in 1994. He explained that most of the club's records were lost in approximately 1999 due to a flood in the basement of the home of Paul Petrie who was the lead instructor at that time. The club contacted ODF&W but they do not keep records of the dates a course was taken they only reference the number sequence on the card in order to estimate the date a course was taken.

Mr. Pressnall said that a Hunter Safety course field day was held in Umapine in 1999 because the club had not yet put gravel on the range so if the ground was muddy there was no way to access the range. Mr. Pressnall submitted copies of hunter safety cards from people who took the Hunter Safety course in 1994 and after. Commissioner Givens made a motion to enter the copies of the Oregon Hunter Safety certificates into the record and Commissioner Murdock seconded it. The motion carried.

Proponent rebuttal testimony: Janice Vonderahe Bledsoe, 401 Parkview Street, Milton-Freewater, OR 97862. Ms. Bledsoe said Vonderahe Inc. is a registered corporation in the state of Oregon and she is a registered agent for the corporation. Ms. Bledsoe said she submitted written testimony for the Planning Commission hearing and would not reiterate the contents of that letter. She said that being the registered agent for Vonderahe Inc. is a matter of public record and if anyone had complaints they could have contacted her. She added that she had received no complaints with regard to the gun club. She said there is a rental house on the property and the occupants have complained about the noise but none have moved because of it.

Ms. Bledsoe said it was stated in the lease between the gun club and Vonderahe, Inc. that if the taxes were raised the gun club would pay for them. She added that they were doing due diligence as a non-profit organization to keep the club dues low.

Ms. Bledsoe said in order for the club to sell alcohol on the premises they would have to have her permission and she would not give her permission for that. She said if the club was not in compliance with restrictions that had been placed on them she wanted to know because it put her in a liable situation.

Ms. Bledsoe said the only farmer she had spoken with about the gun club was Mr. Schultz who contacted her wanting to store equipment on the property so she gave him Mr. Pressnall's phone number.

Ms. Bledsoe said she could make more money if she leased the land to a farmer than she does from the gun club but her father was an advocate for teaching safety to young people and that is how the gun club got started.

At the request of Commissioner Givens, Ms. Bledsoe identified the location of the rental house on the property.

Mr. Pressnall addressed the topic of shot fall on the shotgun portion of the range which had been brought up as a concern. He said someone had pointed out that there were trap houses within a few feet of the adjacent property. He clarified that the clay pigeons coming from those houses were incoming, toward the range. There are crossing patterns, etc. They aren't shooting at a high arc toward the neighboring properties.

Mike Robinson, on behalf of the gun club, said the Board's responsibility was to make a decision on the approval criteria in the statute; was the use taking place on September 9,

1995 and did it offer training certification during that year for one to three activities. If those statutory requirements had been met, the Board had an obligation to approve this application.

Mr. Robinson clarified that although the applicant had originally requested to expand the geographic area of the facility, that request had been withdrawn. The applicant wants to stay in the current area where they are operating and put up a few extra structures for a variety of activities. The gun club does not believe that the proposed improvements would create a large influx of activity and would like the cap on their membership released. If they decided to expand in the future, they would go through an application process similar to this one to ask for approval. It is clear that State law allows the enhancement, modification or expansion of firearms training facilities but this request was only for enhancement and modification.

Mr. Robinson made it clear that this use as a firearms training facility was not a "grandfathered" use but, according to the Oregon Legislature, was a use allowed in the EFU zone. Mr. Robinson referred to a six-page document that listed 47 uses that were not farming activities that were allowed in the EFU zone. He said the EFU zones were called Exclusive Farm Use zones but were not used only for farming.

Mr. Robinson said the people who were opposed to the gun club had presented their concerns and he would answer those concerns. He added that no one had reported a safety issue to any law enforcement agency. The opponents stated that they were unhappy with the activity at the gun club but that is different from anyone saying that the gun club had not been safely operated.

Mr. Robinson pointed out that the Planning Commission made some good recommendations and put a lot of thought into the conditions they placed on the application. The gun club accepted the majority of the conditions but there were a few that they would like to have modified or removed.

Mr. Robinson referred to the 2006 Court of Appeals case called Citizens for Responsibility from Lane County, which he cited in his findings to Umatilla County. He said testimony had been given that stated there was no evidence of certification in the record. The statute does not require that there be written certification, it says training and certification must be provided. Issuance of a paper certificate is not mentioned. Dozens of affidavits have been submitted as evidence declaring that the required training and certification occurred at that the gun club beginning in 1994. Mr. Robinson read from a letter from the Court of Appeals that stated they had not found any support in the Statute, according to ORS 197.770, for requirements for a firearms training facility to provide certificates of a particular number or within a particular time frame in order to continue to qualify as a facility. The certificate issuance provision is part of the definition of a firearms training facility and not a mandate for a particular level of facility performance. Mr. Robinson said there was evidence that the gun club was in operation in 1994 and that there was intent to provide training and issue certificates.

Mr. Robinson referred to ORS 467.121, which is an exemption for firearms training facilities from civil and criminal liability for noise as long as they are operating with certain, reasonable hours. This statute protects the firearms training facilities just as the right to farm statute in Oregon protects farming. Mr. Robinson said he recognized that people don't like the noise from the gun club, but the club had a right to be located where they were and have accepted conditions that will help manage the noise and hopefully improve that issue. They will be meeting with neighbors on an annual basis to hear their comments and do what they can to address their concerns.

Mr. Robinson said the matter of the taxes is not relevant to the approval criteria and should not be considered. If the Board finds, as the Planning Commission did, that the requirements of 197.770 are satisfied, then this application should be approved. He added that the things that were heard regarding impacts were not relevant to statute and were not a basis for denial.

Mr. Robinson said the numerous affidavits submitted by the gun club, which were written under penalty of perjury, all state that beginning in 1994 there were training courses that resulted in the issuance of certifications. It is clear that the people were referring to the East End Rod & Gun Club.

Mr. Robinson said what was being requested in this application would not create a drastic change to the club or create a significant impact. This operation has been in existence for 20 years and if there had been a serious impact, there would have been contact about it before this. He added that LCDC (Land Conservation and Development Commission) states how the use of a firearms training facility should be operated and if they thought the use was inconsistent with the statute and the legislative history it would not be in the Administrative Rule.

Mr. Robinson said the gun club existed in 1994 and 1995. There was written and oral evidence presented that supported Mr. Pressnall's testimony. Mr. Pressnall rebutted the evidence of what was shown on the early maps. Mr. Robinson added that the maps were a snapshot in time. The statute did not require that the gun club have buildings or permanent structures. Mr. Robinson said that Mr. Pressnall stated that the club had portable targets in 1994 so there would not have been structures constantly on the property.

Mr. Robinson commented on Mr. Rea's claim that the gun club was an industrious operation. He said what he heard in testimony was that people in this part of the state enjoyed getting together to shoot guns. He added that there was testimony that there was always someone on the range who was qualified to be a range safety officer. The fact that the club has been inexistence for twenty years and there have been no reports of accidents or injury is evidence that the club is well operated and that accidents are unlikely to happen.

Mr. Robinson said that after hearing the testimony from Mr. Lefore, it was traffic in general on the road, not just from the gun club, that created the dust. He pointed out that

A & B Asphalt is a short distance from the gun club. They are a mining operation and their trucks travel that gravel road creating dust.

Mr. Robinson closed by saying the gun club recognized the importance of being a good neighbor and have accepted most of the conditions of approval and expect to be bound by those conditions. He added that they would welcome calls from neighbors and the county if they were not operating properly. Mr. Robinson said the criteria had been met and they were asking for approval of this application.

Chairman Elfering said the Board had numerous questions before them and asked Mr. Olsen about a call for a continuance. There was some discussion and it was determined that the record and the public testimony portion of the hearing would be closed and the remainder of the hearing would remain open to allow the Board to deliberate and make a decision. After consulting the calendar it was decided to continue deliberations on June 23, 2014 at 10:30 a.m. in Room 130 of the Umatilla County Courthouse.

Respectfully submitted,

Connie Hendrickson
Administrative Assistant