

**UMATILLA COUNTY BOARD OF COMMISSIONERS
LAND USE HEARING, MINUTES**

January 16, 2018
10:00 a.m., Room 130, Umatilla County Courthouse
Pendleton, Oregon

Commissioners Present: Chair George Murdock, Vice-Chair Larry Givens and
Commissioner Bill Elfering

County Counsel: Doug Olsen

Members and Guests Present: Bob Waldher, Planning Director; Carol Johnson, Planner; Kent
Madison and Laura Madison, Applicants.

CALL TO ORDER

The public hearing was called to order by Commissioner Givens (as liaison Commissioner to Land Use/Planning) at 10:03 a.m. for the continued hearing from 12/20/17. He outlined purpose, description, background. This is the "Madison Rezone" -- Comprehensive Plan Text Amendment and Goal 3 exception #T-17-075, Comprehensive Plan Map Amendment #P-121-17 and Zoning Map Amendment #Z-312-17. Applicant/Property Owner: 3R Valve, LLC, Kent Madison, Member.

He noted all testimony today is for a concise statement to the criteria outlined. Staff report will be first. In addition, a letter was received after packets were prepared, which will be entered into the record.

Staff report – by Carol Johnson, Planning staff. This is a complex application to be processed. The subject area is south of the Umatilla River between Buttercreek Highway and Stanfield-Meadows Road, approximately one mile south of Hermiston city limits and the Urban Growth Boundary. She outlined changes in zone from the staff memo along with allowable exceptions pursuant to Oregon Administrative Rules and standards. The Planning Commission met 11/16/17 and made recommendation of not to forward to Board for consideration as the applicant did not meet statewide planning goal or reasons for exception. A land use hearing first set on 12/20/17; continued to today. She added an emailed letter received from Rhonda Villalobos, who requested it be added to the record (assigned #14 for the exhibit list). **Motion was made by Commissioner Elfering to enter the Villalobos letter into the record as exhibit #14. Seconded by Chair Murdock. Carried, 3-0. Motion was made by Commissioner Elfering to enter into record exhibits #1-131. Commissioner Murdock seconded. Carried, 3-0.**

In response to Commissioner Elfering's question about Planning Commission action, Ms. Johnson clarified its action -- the 11/16 hearing was closed after the commission did not get a motion as needed to approve. Discussion turned to the location of the Villalobos property (tax lots 300 and 500 on the map). Mueller owns TL 200 and 100 and others. Villalobos access is off of Stanfield-Meadows Road. There was more discussion about location, property, right of way and access.

Proponents:

Kent Madison and wife, Laura, 28647 Madison Road, Echo. Mr. Madison gave history/background from wind project developers need for access for transmission line. Madisons bought the property from Walker through John Deere Renewables = nearly 11 acres of ground. He explained property make-up; water rights transferred, his farming operation, clean-up of property and cost-effective moves. No irrigation and delivery system; they are surrounded by ag circles in a pressurized system. After a time, solar came to the area – they added that by bid. Now, that leaves about 4.5 acres around the panels that are not really farmable and there are limitations regarding “shading” of solar panels. 4.5 acres are farmable, but crop cannot be too high; thus his trying to develop the RV project.

He made a PowerPoint presentation including descriptions and location maps. Comparisons with aerial photos from 1994 to present. He reiterated Villalobos property location compared to his and to Mueller’s properties. He also explained turn-around and access on Highway 207. Power poles, transmission lines, shadow effects. He wants to make a kiosk-based RV park for the location as there is enough space for 40 “high end” RVs. For additional information, Ms. Johnson referred to p. 91 of the Board’s packets.

Mr. Madison went through additional slides for current projection with the same zone vs. projects of higher value and more benefit to the county by taking low to no value EFU land not farmed for 40 years and to choose to do something different with it for the benefit of citizens in the county. He felt there may be a higher and better use; his proposal is just that and requested Board consideration.

Chair Murdock had no questions. In response to Commissioner Elfering’s question about original intent when land was purchased, Mr. Madison advised he needed it for transmission line. It was a great deal and he knew the water rights and transferred them. He pointed out his actual intent was to buy the water rights as it was of much more valuable than the land itself.

There was more discussion about the impact between barren land and farm land, what, if anything, is growing on that particular property (Mr. Madison noted rye is growing, but it is mowed to control it; the ground is very sandy). Close by is Hinkle property and CalPine (was Simplot). Mr. Waldher provided a larger map for adjacent properties and their use – heavy industrial for some of it.

Mr. Johnson provided clarification based on comments. Regarding the conditional use permit for wind turbines for placement on his land (south on Buttercreek) as a component to the CUP, a maintenance facility could have been part of that, but it wasn’t. The land use decision was for transmission line which ultimately received approval for the south crossing that piece of the property. There was no comment for approval of an operations building for the wind project. Mr. Madison advised reasons he didn’t want an operations building after following up with the wind farm is it didn’t make economic sense.

Regarding the property transfer, Ms. Johnson pointed to the staff report, footnote on p. 6 showed only documentation for notice was of documents from records; there was a statutory warranty deed conveyed from Walker to Madison (John Deere wasn't involved in that part). Mr. Madison agreed title was direct, but John Deere paid the difference in the amount (\$350,000 vs \$150,000 from Walker's time to Madison's time).

Ms. Johnson advised Goal 3 is to maintain agricultural land – it is broader scope. She noted a huge long process of local comprehensive planning is submitted to State for land use. The state doesn't just draw a map and say this is what you will have. The legislature is being lobbied for a lot of additional allowable uses – and some will go away as well. Over time the planning process and land uses change.

Mr. Madison noted he is more a natural resource manager; he and his family have been on their property since the early 1900s. Discussion turned to solar panels as a resource. Commissioner Elfering expressed concern regarding Goal 3 as it is designed to protect farmground for crops to be grown.

Commissioner Givens noted his history of working from the 1990s of state and local land use laws. He directed comments to the Villalobos letter; in particular impact to agriculture. Regarding item 3, treatment ponds, Mr. Madison's research directs him to preference of using a system like that at Love's outside Boardman for treatment (not open ponds). He suggested it could be a condition of a use permit.

Regarding the RV area, he plans to use chain link fence. Regarding aerial spray, he's not aware of any spraying.

Commissioner Murdock asked about Villalobos' property location compared to Madison's subject property and asked what was the actual concern (referred to Villalobos 12/18 email). Since there are already power poles there, aerial spraying would not happen over the proposed RV part or Villalobos property -- spraying is actually for Mueller's property.

Speaking to legalities, Commissioner Givens pointed out the Planning Commission basically made a motion to not approve it; technically, they should have gone back to take action for a not-approved action to recommend to the Board of Commissioners. Discussion turned to options for Board action and what are Madisons' options? Ms. Johnson advised it can be appealed to LUBA. If the Board does approve, Villalobos could appeal it to LUBA. Commissioner Givens is not in favor of taking EFU out of production when it is EFU-zoned ground; intent of land use laws is correct. However, he felt Madisons were looking to make ground more valuable with transferring a water right. He has a tough time saying let's not challenge the law – leave it EFU. Also, it is tough to farm this amount of land without water. Regarding highest and best use – there are many different types of uses in that area. Ms. Johnson added evidence in the record makes the findings the Planning office came up with. In the Board's deliberation, she cautioned awareness there has to factual basis for action.

Doug Olsen, County Counsel, noted p. 31 refers to Administrative Rules (criteria): this provides outline of what criteria is used for basis of decision – he agrees with Ms. Johnson that this application doesn't provide

sufficient facts. "Highest and best use" is not in the criteria. Commissioner Elfering added he didn't think it a good idea to waste land. Mr. Madison reiterated this is a small piece of ground without much value.

Commissioner Givens talked about established zoning laws and Planning Goal 14. Commissioner Murdock agreed with Commissioner Givens' comments; he knows what he wants to do, but doesn't feel it can be done based on the rules. Ms. Johnson talked about some of Madisons' decision-making on property are farm management decisions. Now, the situation is the inability to develop property. However, in reading the criteria and standards, there isn't a zoning change request to decide.

There were no opponents to speak today, except the Villalobos letter, which had been addressed.

Mr. Madison stressed that economic gain in our county is important. He's not interested in taking this to LUBA. He feels local control is important in making decisions about property vs. having the state make the rules overall.

Ms. Johnson agreed the legislature must be approached to move changes forward. However, findings must be based on evidence. She referred to circled p. 23 regarding findings for Goal 9 as an example of findings regarding exceptions.

Commissioner Givens clarified by example: the ground is not producing a crop and water rights that would give a person the criteria (it is more than water rights – that was just example). Mr. Madison noted for 40 years that property was not used – it wasn't productive for farm use. Commissioner Givens pointed out changes in uses, society, technology -- this is something that should go to legislature. Commissioner Elfering noted regulations are statewide, but it bothered him latitude is not written into the laws yet.

Commissioner Givens closed the hearing at 12:03 p.m.

Commissioner Elfering moved to approve the request based on fact it is not producing an ag product it has already been removed from ag land. *No second.* Mr. Olsen cautioned regarding legal criteria, there is not anything on the record and findings cannot be drafted to support action. Action must be based on allowable criteria. He noted this can be continued. **Commissioner Murdock moved to continue and to set a date for more discussion – March 7, 2018 at a regular Board meeting 9 a.m. Seconded by Commissioner Elfering. Carried, 3-0.**

The meeting adjourned at 12:08 p.m.

Melinda Slatt, Executive Secretary–Board of Commissioners