

MINUTES
UMATILLA COUNTY BOARD OF COMMISSIONERS' LAND USE HEARING
Meeting of November 13, 2024
9:00 a.m., Room 130, Umatilla County Courthouse
Pendleton, Oregon

Commissioners Present: Chair John Shafer, Vice-Chair Timmons and Commissioner Dan Dorran

County Counsel Doug Olsen

Guests Present: Bob Waldher, Umatilla County Community Development Director; Calvin Garton, Applicant/owner (arrived @ 9:08 am)

Video link or Calling in: Gina Miller, Umatilla County Planning; Jennifer Blake, Umatilla County Director of Human Resources;

CALL TO ORDER: Chair Shafer called the meeting to order at 9:01 am, (the applicant/owner was not present, the hearing proceeded as scheduled). Chair Shafer explained, our role today is to conduct a public hearing concerning a request to appeal Umatilla County Planning Commission's decision to deny a Type II Land Division. The proposed partition would create three lots of at least 2-acres in size.

I will begin the hearing by asking staff to summarize the application. I will then ask the applicant to testify followed by those in favor of the application. Then, any persons in opposition or who have questions or concerns will also have a chance to speak. If there is opposition or questions, staff may respond to them. The Commissioners also may ask the staff and witness questions throughout the hearing, until the record closes.

Any person with an interest in today's agenda may offer relevant oral and/or written testimony. But please only speak when I identify you for that purpose. When you testify, please begin by clearly stating your name and address. If you represent someone else, please say so. If you have any exhibits you want us to consider, such as a copy of your testimony, photographs, petitions, or other documents or physical evidence, please provide it to me or the staff. It will be marked as part of the record.

Chair Shafer called for any conflict of interest, declaration of ex-parte contact & objections to jurisdiction, there were none.

- The following declaration was read:
- a. The agenda identifies the applicable, substantive criteria for evaluating the request. Staff will review these criteria.
 - b. All testimony and evidence must be directed toward these criteria.

- c. Failure to raise an issue with sufficient detail to afford the decision-making body and the parties an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals based on that issue.

Business Items

1. Appeal of Planning Decision – Staff Report presented by Bob Waldher, Umatilla County Community Development Director. A “Request for Appeal” was filed by Calvin Garton (applicant/owner) to appeal the Umatilla County Planning Commission’s unanimous decision to deny Land Use Request #LD-5N-912-24. The applicant’s proposed partition would create three (3) lots. Two of the lots would be slightly over 2 acres in size and the other would be just over 4 acres. The Land Use standards applicable to the applicant’s request are found in Umatilla County Development Code 152.684, Type II Land Divisions.

Mr. Waldher continued by explaining the process that started in March of 2024 and the various correspondences that occurred up to this point. He provided exhibits A-R including maps, notices, letters and multiple other communications between the applicant/owner, other people and entities involved and Umatilla County Land Use Department.

Mr. Garton arrived at 9:08 am.

Mr. Waldher explained that another letter was received from the applicant yesterday afternoon and requested that it be added as “Exhibit S”. He addressed the issues in the letter concluding a partition plat cannot be changed mid-way through the process. If the applicant is proposing a different configuration, the current application would need to be withdrawn and the process would start over. The issues brought forth would still need to be addressed.

The notice for public hearing was mailed on October 24, 2024 to the owners of properties located within 250-feet of the perimeter of Tax Lot 809. Notice was also published in the East Oregonian notifying the public of the applicant’s request before the Board of Commissioners scheduled for November 13, 2024.

The Board of Commissioners is tasked with making a decision whether or not to uphold the decision of the Planning Commission to deny the Type II Land Division request. Approval or Denial must be based on substantive, factual evidence in the record, not conclusory statements. The decision made by the Board of Commissioners is final unless timely appeal to the Land Use Board of Appeals.

Upon conclusion of the staff report Mr. Waldher asked if there were any questions. Commissioner Dorran commented that the report was very thorough and no questions were asked. Commissioner Timmons agreed.

Chair Shafer acknowledged Mr. Garton and informed him that he was going to read the opening statement again since he was not there when it was read initially. Chair Shafer wanted Mr. Garton to understand the hearing procedures and what is expected. Mr. Garton replied I know what is going to happen already. Opening statement re-read in its entirety and Mr. Garton was given the opportunity to speak.

Kalvin B Garton 1328 NW King, Pendleton OR. I started this six months ago and all I wanted was to do a 2 lot minor partition. They wanted me to do a four (4) lot subdivision. I have done this on the south end of this property and suddenly, Megan has “absolute authority” to only let me do 3 lots. A lot is worth \$100,000, so she wants to steal \$100,000 from me. He then stated he wants to do four (4) lots.

Mr. Garton went on to state that the wetland study had already been done. He stated that the wetland marks on the maps from the County were “so far off”. He went down and put stakes at the high water marks. He invited the Commissioners to go take a look at the property. I brought aerial photos to show you the wetlands and distances.

He discussed cap and fill septic systems and that they could be used almost anywhere on this property and that he already have five approved standard systems to do the first two lots. He still wants to do just the two lots, he never wanted to do a three lot partition. He again invited them to come take a look and see if they cannot see four building sites.

Mr. Garton began to mention other topics and Chair Shafer reminded him that we were only dealing with this issue today.

Mr. Garton then went on to declare that he wants four lots. He just changed the plat a little bit to make it four acres so he could get four lots instead of three. He doesn't think he should have to start over.

He continued to discuss the high water marks and notes that the culvert needs cleaned out, it belongs to West End Extension Irrigation District. He pointed out that you can see from the aerial photo, the area where it drains into the neighbor's property, and points out that the culvert needs to be deepened. West End Extension needs to fix that. He again stated he doesn't think he should have to reapply because he changed the plat.

Commissioner Dorran pointed at the map showing the three lots included in the current application and asked how many lots do you want to sell? Mr. Garton replied, “I want to sell it all in one piece.” He currently has it for sale as one piece. He then stated he wants to sell the first two (lots) this year. He believes to have one sold if he can get this to go through. Discussion went back and forth as to the number of lots he would like to sell versus what he has applied for (three).

Commissioner Dorran asked when he had purchased this property. Mr. Garton thought it to be 25-30 years ago. He states he has been slowly partitioning it. Commissioner Dorran asked, did you think you would have an issue with wetlands on that property? The previous owner's sold it due to the wetland issues. Mr. Garton replied that this water comes from

West End Extension, it was an open canal, they covered it and pressurized it. The wetlands have changed. There was further discussion regarding the wetlands. The study Mr. Garton continues to refer to is not on file, he claims the County has not done a study either.

Mr. Waldher added that the areas shown on the map that outline the wetlands are taken from the National Wetlands Inventory mapping. A map layer that is maintained by U.S. Fish and Wildlife Service. It is thought that it is not very accurate compared to what you might encounter in the field. NWI did the best they could at the time with the technology they had. It was explained that it is up to the applicant to do a wetland delineation if they disagree with what NWI shows. Exhibit E, a notification from DSL was referenced and read aloud. In the correspondence it is the recommendation that “the applicant hire a qualified wetland consultant.”

The responsibilities rest with the developer to have a wetlands study performed. There are three criteria that determine a wetland--hydric soil, hydrophytic vegetation, and wetland hydrology. If you dig a pit and it fills with water that would be indicative of a wetland. Prior to his career with Umatilla County, Mr. Waldher did wetland delineation in the field. He personally drove to the property in question back in July and from the roadway was able to observe wetland plants even outside of the areas of NWI mapping.

Mr. Garton said he did a better wetland study. He compares a traditional wetland study using the soil probes to his, he dug 6 test holes for septic tanks and 5 came back as being able to put standard drain fields in. He has approval for cap and fill systems. He will dig more holes to prove that. He has done a DEQ test that he feels is way more accurate than a wetlands study done with a soil probe.

Commissioner Dorran asked for a copy of the DEQ wetlands study? Mr. Garton replied, “I have not done one, it takes a year and \$10,000”. He reports that he did a DEQ sewer test.

Commissioner Timmons asked how he determined the high water line? Mr. Garton, “I walked in until I got my feet wet, down by the pond”. Everything drains into this pond and out of this culvert so there is a high water table and it drains toward the neighbors he states.

The wetlands study was discussed again and it was reiterated, the developer is responsible for providing the study if they disagree with what is shown per NWI.

Commissioner Dorran explains that it is his responsibility as the liaison to make sure that the Planning Department put out a professional document that conforms the Federal, State and Local ordinances. And that it does not end up allowing for nitrates and other issues due to not following ordinances and requirements. He is proud of the Planning Department, the work they put into this case and the document being covered today. We do not make the laws.

Mr. Garton said he would order the wetland study but he doesn't feel he should have to change the partition plat. “You can make this subject to the completion of my wetlands study and I'll do it.” Commissioner Timmons confirmed that he is trying to make it to

where he can eventually have 4 lots and if that's the case, he would need to reapply due to the changes.

Mr. Garton again responded with profanity. Chair Shafer warned him of his language. He then asked him if the route he wanted to proceed with is the document that he provided yesterday. If that is what he is desired, then to his understanding his current application would need to be withdrawn. Mr. Waldher confirmed that to be correct, if he is proposing something different than what as originally submitted.

There was continued discussion clarifying that he can withdraw the current application and reapply with the new configuration. Or they can deny the original application and again he would need to reapply or go to Land Use Board of Appeals.

Mr. Garton again responds with profanity.

Commissioner Dorran moved to uphold the decision of the Umatilla County Planning Department to deny the Garton Type II Land Division based on foregoing Findings of Fact and Conclusions of Law. Seconded by Commissioner Timmons. Carried, 3-0.

Hearing Closed and meeting adjourned by Chair Shafer at 9:44 am.

The meeting was reconvened at 9:46 am by Chair Shafer, we are back in session to discuss accepting the Exhibits A-S. **Commissioner Dorran moved to accept Exhibits A-S for the Land Use Hearing, Calvin Garton LD-5N-912-24. Seconded by Commissioner Timmons. Carried, 3-0.**

Hearing closed 9:47 am and meeting adjourned.

Kelsey Bailey

Executive Secretary – Board of Commissioners