

**UMATILLA COUNTY PLANNING COMMISSION**  
**Meeting of Thursday, May 23, 2013, 6:30 p.m.,**  
**City of Milton-Freewater Public Library, Albee Room**  
**Milton-Freewater, Oregon**

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**COMMISSIONERS**

**PRESENT:** Randy Randall (Chair), John Standley, David Lee, Don Marlatt, Suni Danforth

**ABSENT:** Gary Rhinhart, Don Wysocki, Tammie Williams

**STAFF:** Tamra Mabbott, Carol Johnson, Richard Jennings, Julie Alford, Connie Hendrickson

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

**CALL TO ORDER:**

Chairman Randall called the meeting to order at 6:36 p.m.

**APPROVAL OF MINUTES:**

The minutes of December 13, 2012 were approved as presented. The minutes of March 28, 2013 were approved with one correction.

**NEW HEARING:**

TYPE III REPLAT LAND DIVISION, #LD-5N-810-13 application submitted by HVAC PROPERTIES LLC. The applicant requests a land division of Tax Lot 306 on Assessor Map 5N 28 27-DC described as Lot 3, Block 1 of the 1st Amended and Supplemental Plat of "Charles Tracts" a subdivision recorded in Plat Book 6, Page 35, Umatilla County Deed Records, and also known as Tax Lot 306 on Assessor Map 5N 28 27-DC. The property is within the Urban Growth Boundary of the City of Umatilla and located between OR Highway 395 N and East 3rd Street, south of Sturgis Street. Approval of the request would result in a division of Tax Lot 306 into two lots each being one acre and requires a decision by the County Planning Commission in a public hearing. The standards of review for the subdivision replat are found in the Umatilla County Development Code, Type III Land Division Section 152.697 (C).

Chairman Randall read the opening statement and called for abstentions, bias, conflict of interest, declarations of ex parte contact or objection to jurisdiction. Chairman Randall stated for full disclosure that he had in the past worked with Attorney David Hadley who was present at the hearing representing HVAC Properties. He went on to say that his

business with Mr. Hadley did not involve the topic of this evening's hearing. He read the opening statement.

**Staff Report:** Senior Planner Richard Jennings stated that the property was located in the Retail Service Commercial zone along Hwy 395 North in Hermiston. The property was originally called Charles Tracts. The property is a two acre parcel and has access from Hwy 395 in the front and the rear access is East 3<sup>rd</sup> Street which is an unimproved road. The applicant is proposing to divide the property into two one acre parcels. There is a building on the front of the property which is being used for a commercial business and the back part of the property is the location of a 100 ft. wireless tower.

The criteria to be met include access, regulations for setbacks, area for a septic system and a minimum lot size of one acre. The access criterion is met from Hwy 395 and from East 3<sup>rd</sup> Street which is a platted road. The minimum lot size in a Light Industrial (LI) zone is one acre and that is what is being proposed so that criterion is satisfied. The area for the septic system is sufficient and the setback requirements have been met.

Commissioner Marlatt asked why the division line wasn't closer to the center of the lot on the plot map. Mr. Jennings stated that the drawing was an approximation done in the office with an aerial photo and a tax map. When the property is surveyed the actual line will be located so that each parcel is one acre.

Mrs. Mabbott said that typically when a property is partitioned it is handled administratively but because this is a replat of a subdivision it needed to go before the Planning Commission for approval.

Mr. Jennings made a correction to his earlier statement by saying that the property is zoned Retail Service Commercial (RSC), not Light Industrial but the minimum lot size is still one acre.

There were more questions regarding where the division would be made on the property. Mrs. Mabbott showed the actual survey submitted by Mr. Hadley to the Commissioners so they could see an accurate depiction of where the new line would be. Discussion followed.

Commissioner Standley asked if there had been a review of the unimproved road and how it would be managed. Mr. Jennings stated that there was nothing in the criteria that required consideration to be given to the unimproved road. Conditions of approval need to be tied to criteria and there was nothing in the regulations for a subdivision of a replat that would require an Irrevocable Consent Agreement (ICA) or Local Improvement District (LID). Mrs. Mabbott said that standard No. 3 could be interpreted to require and recommend an ICA and participation in an LID in the future and to guarantee that in the interim until that roadway is developed, there would be some legal access across the parcel that is closest to Hwy 395.

**Applicant testimony:** Terry Hall, 505 East Tietan, Walla Walla, WA, said that he was the applicant and a member of HVAC Properties, LLC. He said there was a commercial building on the front portion of the property and Mike Calame placed a tower on the back portion. It would be of benefit to both of their businesses for the property to be divided.

Commissioner Danforth asked if the property with the tower will remain with just a tower on it and Mr. Hall said that it would and that the only access needed to that parcel would be from East Third Street for occasional maintenance.

Mrs. Mabbott asked how someone would access the back lot if one of the properties was sold to a third party and Mr. Hall answered said that although 3<sup>rd</sup> Street was unimproved it was drivable and would remain an access. Discussion followed.

Commissioner Standley said that in the future, the property could be sold and a storefront placed there so as planners he wanted to make sure the issue of the ability to get to the property was addressed in case that were to happen. Mr. Hall stated that there is a large hole on the property that is at least twenty feet deep and it would take a lot to improve the property in order to build a structure there and use it commercially, but it works for the tower. Mrs. Mabbott clarified that the county will not be building 3<sup>rd</sup> Street. If that land does develop at some time in the future, the requirement of the ICA would make it clear for present and future land owners that they would pay their proportionate share for the improvement of the road.

**Public testimony:** Mike Calame, 1304 East Main Street, Hermiston, OR, said that he is purchasing the lot where the tower is located and he will not be building on the property. The tower has been there for several years and is used for wireless internet only. He visits the property about three times per year just to check on things.

**Public testimony:** David Hadley, 130 SE Third Street, Hermiston, OR stated that he had worked with Mr. Hall in putting together the application. In anticipation of potential issues raised about the road, their application states that if the Planning Commission chose to add the ICA as a condition of approval, the applicant would be willing to sign it.

Chairman Randall closed the hearing at 7:04 p.m. Commissioner Marlatt moved to recommend approval of the replat of HVAC Properties with the condition that an Irrevocable Consent Agreement be signed. Mrs. Mabbott clarified that the motion included the approval of the findings written by staff and to approve the application with the addition of condition number five to record an Irrevocable Consent Agreement, Commissioner Marlatt agreed. Commissioner Standley seconded the motion and it passed unanimously.

### **NEW HEARING:**

TEXT AMENDMENT, #T-13-050 and ZONE MAP AMENDMENT #Z-297-13 application submitted by UMATILLA COUNTY. The request is to adopt changes to the FEMA (Federal Emergency Management Agency) Flood Insurance Rate Maps (FIRM)

Panels along the Walla Walla River – Umatilla County FIRM Panels #410204-41059C-0120G, 0430G, 0435G, 0445G, 0455G, and 0465G. The levee system along the Walla Walla River has undergone changes to recertify the levee to FEMA standards. The area of the flood study was along the Walla Walla River from the Washington-Oregon state line south to the Joe West Bridge. The recertification flood study process provides the information necessary to modify the FEMA floodplain in and out of the levee system. A Letter of Map Revision (LOMR) has been submitted to FEMA for review.

Chairman Randall called for abstentions, bias, conflict of interest or ex parte contact; there were none. He read the opening statement.

**Staff Report:** Senior Planner Richard Jennings stated that effective September 3, 2010 the Walla Walla levee system that runs through the city of Milton-Freewater became decertified. The flood plain was remapped as though the entire levee would fail placing the vast majority of Milton-Freewater and surrounding rural areas in the [FEMA] flood plain. Since that time the city of Milton-Freewater, the County and the Milton-Freewater Water Control District has worked to get the levee recertified. A study was done to determine what was needed to bring the levee up to standard. Mr. Jennings noted that Mr. John Wells from Anderson, Perry and Associates was at the hearing and would be able to answer technical questions that might arise. The effort to complete all of FEMA's requirements has taken place over the last three years and the paperwork has been submitted.

A notice required by FEMA was sent out in March of this year to all property owners that would be affected by the changes to the flood map. A copy of the revised FIRM panels was included in the packets that were sent to the Commissioners. The effective date of the new flood maps will be September 20, 2013 according to FEMA. The overall affect of the levee work and remapping of the flood plain has removed many properties from the flood plain but a few will now be added.

Mrs. Mabbott stated that staff would be available to answer questions about specific properties after the hearing and that specific tax lot maps could be printed for people at no charge.

Commissioner Standley verified that the Planning Commission had no jurisdiction in determining whose property was and was not in the flood plain. Mr. Jennings stated that any amendment such as a letter of map amendment or letter of map revision would be reviewed and signed by the county and sent to FEMA for their approval. The county is tasked with administering the regulation locally. The county's jurisdiction would then be to review and approve or deny applications based on the flood plain regulations.

Mr. Jennings said this was a text amendment which would be amending a paragraph to reference the flood hazard overlay zone in Chapter 152 section 353 of the Development Code. The County will be adding the text of the different panels that will be changing on the effective date of September 20<sup>th</sup>.

**Public Comment:** Manford Anliker, 84897 Anliker Lane, Milton-Freewater, OR 97862. He introduced himself as the Chair of the Milton-Freewater Water Control District then clarified that it was not FEMA that decertified the levee; it was the Army Corps of Engineers who decertified the levee and then reported to FEMA.

**Public Comment:** Mr. Bruce Mason, 54055 Summers Lane, Milton-Freewater, OR 97862. Mr. Mason stated that his property was located about  $\frac{3}{4}$  of a mile north of where the levee ends. He received the notice and the map showing the changes in the flood plain. He has lived on this property for 35 years and has never experienced high water until January 2012 and again during April of this year. He would like to do something to protect his property from flooding such as building a concrete wall. Mrs. Mabbott said that once the map is adopted he could hire an engineer and propose a flood structure that was in compliance with the regulations that the county administers. Discussion followed.

**Public Comment:** John Wells, 54015 Mauer Lane, Milton-Freewater, OR 97862 explained that the way the mapping was done it picked up low spots which were reflected in the survey map which is why the maps are being redrawn and shown as they are. He said that Mr. Mason would need to file a LOMR (Letter of Map Revision) application and demonstrate that there was a no rise for the existing dwelling.

Commissioner Lee asked when the last flood occurred in the area. Mr. Wells stated that there was a high water event in April 1920. He said there are ongoing studies being done through the Walla Walla Basin Watershed Council. Commissioner Lee asked if any of the studies included pulling gravel from the river and placing rip rap barriers to keep the river bottom from becoming deeper. Mr. Wells said that sort of thing could be done with the proper paperwork and permits but it is a long process. Right now the plan is to change the flood maps to match what is shown by the model; where the current flood zones are located.

Chairman Randall said we are aligning our county code to match the FEMA maps and Commissioner Standley added that doing this would help us control future development in the area. Mr. Mason said his concern was protecting his property. Mr. Jennings stated that it was possible to build in a flood way but an engineering study would have to be done to show what effect the proposed flood wall would have on properties up and down stream depending on the water flow.

Commissioner Danforth asked Mr. Mason if the scope of the work stopped before reaching his property and he answered said that it had. Mr. Jennings said the flood study could have stopped at the end of the levee because that is where the Water Control District had the most interest in but it continued to State Line and all of the area where Mr. Mason lives was mapped. This study gave a very good representation of what the flood plain should be. Because of this information, when Mr. Mason starts to work on his plan to protect his property he will know that the flood boundaries on his property are pretty accurate. Chairman Randall said after the maps have been adopted, Mr. Mason will have a starting point for possible future engineering.

**Public Comment:** Ann Jolly, 225 Maple Avenue, Milton-Freewater, OR 97862. Mrs. Jolly asked if the work on the levee created the flooding problem that Mr. Mason is now experiencing.

Mr. Wells explained that the levee ends at Tum A Lum Bridge which is located about one mile from Mr. Mason's house. The work to the levee has been primarily raising the levee, adding rip rap, replacement and repair of culverts and expansion of the bridge at 15<sup>th</sup> Avenue. None of that activity should have impacted any properties as far away as Mr. Mason's is from the levee system. The flooding on his property started prior to when the work on the levee began.

Chairman called for comments from public agencies; there were none. He closed the hearing at 7:40 p.m.

Commissioner Marlatt stated that they should get the revised maps approved as soon as possible so that the people will be able to stop paying for flood insurance.

Commissioner Danforth made a motion that the Planning Commission recommend the proposed changes to the Umatilla County Development Code 152.353 to the Board of Commissioners. Commissioner Lee seconded the motion. It was passed unanimously.

### **NEW HEARING:**

PROPOSED REQUEST by Sam Humbert, property owner, to change the zoning of approximately eight acres from Exclusive Farm Use (EFU) to Rural Retail Service/Commercial (RRSC). The properties are identified as Tax Lots 1901, 1903, 2200 & 2300 on Assessors Map 6N 35 25C located in the vicinity of the northwest corner of the intersection of the Sunnyside-Umapine Highway and State Highway 11, north of the City of Milton-Freewater.

The request includes the following land use actions:

1. Amend the Comprehensive Plan designation from Orchards District Agriculture to Commercial. Comprehensive Plan Map Amendment #P-107-12.
2. Amend the Zoning Classification from Exclusive Farm Use (EFU) to Rural Retail Service/Commercial (RRSC), Zoning Map Amendment #Z-296-12.
3. Amend the Comprehensive Plan text to include a Goal 3 exception to change the designation from resource land to non-resource land. Comprehensive Plan Text Amendment #T-12-049.

Chairman Randall called for abstentions, bias, conflict of interest and ex parte contact from Commissioners and staff. There were none. He read the opening statement.

**Staff report:** Senior Planner Carol Johnson referred to letters from DLCD (Department of Land Conservation and Development) and ODOT (Oregon Department of Transportation) that she had given to the Commissioners and requested that they be

entered into the record; the DLCD letter as Exhibit 3 and the ODOT letter as Exhibit 4. She noted that copies of those letters had been given to the applicant. She corrected page 43 of the report in the Commissioner's packets. She asked that the word "and" be struck from a quote from the Comprehensive Plan in the paragraph in the middle of the page. Also she asked that on page 46 the word "irreversible" be changed to "irrevocable" in the first paragraph, the last sentence.

Mrs. Johnson continued with her staff report. The property owners are Sam and Rosella Humbert and they are requesting that 8 acres of Exclusive Farm Use (EFU) land be rezoned to Rural Retail Service Commercial (RRSC). The property is located northwest of the intersection of the Sunnyside/Umapine Hwy and State Hwy 11. She referred to maps being projected on the wall.

The approval of the Humbert request would result in a Comprehensive Plan Text Amendment for justification of the committed exception relative to Goal 3, the agricultural goal. Also it would change the Plan Map designation of Orchards District Agricultural to Commercial.

An irrevocably committed Exception to Goal 3 must be met as set out in the Goal 2 exception process found in the Oregon Administrative Rules Chapter 616, Division 4, 18-28. Mrs. Johnson quoted from this rule and referenced the information in the staff report that looked at the lands adjacent to and surrounding the Humbert's EFU parcel. She went on to say that additionally the proposed amendment must be in compliance with the county Comprehensive Plan, Statewide Planning Goal 12, the state Transportation Planning Rule and that it is subject to the requirements of a Traffic Impact Analysis. She noted that a specific traffic impact analysis had not been done.

After evaluation of the goals, state rules and the comprehensive plan, staff determined that substantial evidence of the relationship between adjacent lands and the exception properties for the Humbert rezone request as presented were not sufficient to conclude that the Humbert resource lands are irrevocably committed to non-resource use. Further, staff concluded that the evidence did not show that uses allowed under Goal 3 are impractical on the subject property. Lands within the UGB (Urban Growth Boundary) were not considered.

The statistical data and impacts to transportation facilities as a result of the rezone was not supplied. Because of this the county was not able to determine if the traffic impacts would be significant.

The requested action by the Planning Commission for this hearing would be a recommendation to the Board of Commissioners. A hearing date of June 13, 2013 has already been set for the Board of Commissioners.

Mrs. Johnson concluded her report and stated that Stan Foster was at the hearing on behalf of Sam Humbert and would be addressing the Planning Commission.

Commissioner Standley asked why there were so many tax parcels within this property. Mrs. Johnson said that the property was formerly owned by the McMahons' and they had created the parcels back in the 1970's.

**Applicant testimony:** Stan Foster, P. O. Box 549, Weston, OR 97886 stated that he was representing Mr. Sam Humbert. He thanked the planning staff for all of their assistance during the application process. He said he and Mr. Humbert brought letters from ODOT (Oregon Department of Transportation) and DLCD (Department of Land Conservation and Development) and asked that they be entered into the record.

Mr. Foster said that since Mr. Humbert was not proposing a new or different use on the property there would not be additional traffic generated, thereby qualifying it for an exception to the Transportation Planning Rule. Part of one of the tax lots is zoned RRSC and the other part EFU. The retail portion of the property has at times been rented to tenants for use as a car lot but because of its small size it has proven to be unsatisfactory for that use. By rezoning the property to RRSC it would provide a better configuration on the parcel allowing products or inventory to be moved further back on the lot creating more visibility and public safety for the consumers.

There is a mixed use of the commercial districts along Hwy 11 with 62.5% of the uses being RRSC. Because of their proximity to the UGB (Urban Growth Boundary) and the historic use of these properties it would make more sense for the property to be rezoned to RRSC.

**Applicant testimony:** Sam Humbert, 53293 Triangle Road, Milton-Freewater, OR said the State of Oregon claims that there are water rights on the property but it is all tail water. When the sprinkling starts there is no tail water.

Commissioner Standley asked Mr. Humbert to explain what tail water was. He said that tail water is water that comes off of another piece of property that is owned by someone else.

Commissioner Lee explained that in row irrigating in the orchards they make ditches around the trees and divert the water into the ditches. When it gets to the end of the property lines, it is diverted back into a ditch that goes on downstream. The water that comes out of the orchard and goes back into the stream is called tail water.

Commissioner Standley asked if there was a water meter feed per acre that could be measured. Mr. Humbert said there was not and that there was no water that came from the ditch. Commissioner Standley asked if the water rights expired after a certain period of time if they were not kept up and Commissioner Marlatt said they don't necessarily expire but it would have to be challenged to get the water rights back once they are lost.

Mr. Foster said that he had asked Mr. Humbert to comment on the Goal 3 exception as it applies to the subject property. The water has an impact on the viability of the

agricultural production. He also said that the soil is highly cobbly and very shallow on the subject properties.

Mr. Humbert said that before he bought the property there was a cherry orchard on it but the trees died due to lack of water. Afterwards, they planted prune trees because they are not supposed to take as much water but they died also. When he bought the property there were just a few trees remaining and he hired a man named Gary Moss to farm it. The following year more than half of the trees did not have any green leaves because they had died during the winter so he pushed them all out. He then started using the property to park equipment but got in trouble with the county for parking construction equipment on farm land. Because the cost of fuel is high, he would like to be able to park the empty drop boxes for his business on his property in Milton-Freewater instead of traveling to Athena to store them.

Mr. Foster clarified that the Humbert's own the land fill in Athena and the drop box business is a franchise for Milton-Freewater. His company, Humbert Sanitation, supplies the drop boxes for the food processing and construction in Milton-Freewater. Mr. Humbert feels he could more efficiently serve the community if he were able to store the boxes in Milton-Freewater instead of Athena. He wants to have this zoning issue taken care of for future generations.

Regarding the transportation impact study, since they do not want to create a new commercial enterprise on the property they believe they can make the case for deserving an exception because the commercial portion of the property was there when the last transportation study was completed and their plans do not include anything that would create more traffic than already exists.

Using the property for agriculture has been attempted by Mr. Humbert and the previous property owners and the inability of the land to produce good crops, in their perspective, validates the lack of suitable agricultural opportunities for the land. Because the property is surrounded by RRSC it makes sense for there to be a block of land on this particular corner for future development.

A concern that was stated by ODOT and Mrs. Johnson during her presentation was in regard to Sunnyside Road. They are unable to address those concerns because they do not own the access onto the road. He reiterated that they are not proposing to add additional traffic they would only like to be able to continue to bring the same trucks to the property and to leave the equipment there.

One of the standards mentioned was whether or not these were irrevocably committed lands. They believe that because the land has been out of agricultural production for many years due to the lack of suitability and bordered on one side by RRSC that there can be no viable agricultural practice. Sometimes small parcels can grow high-value row crops, but from experience, they know that this land does not have adequate water for those crops. Under the circumstances, they believe that this land is irrevocably committed to commercial use.

Commissioner Standley said that the Planning Commission would have to be 100% convinced that there was not water and they were unable to get water on the property. Mrs. Johnson said she had copies of the water rights that Water Resources provided regarding the property. She passed them to the Commissioners so they could read them.

Commissioner Standley confirmed with Mr. Humber that there was no well source water and that even though there were rights to the tail water it did not exist. He asked if the lack of tail water could be proven and Mr. Humbert said that it could through the Walla Walla Watershed [Council].

Commissioner Standley asked why Mr. Humbert's neighbors were able to grow trees and fruit and he could not. He said that the neighbors had dedicated water rights but the water right on his property was strictly tail water. Chairman Randall said he used to have 10 acres on Pleasantville Road and he had tail water but he also had a well water right and was able to irrigate from his well. Mr. Humbert said some of his neighbors may have that but he does not. Discussion followed.

Commissioner Standley asked if there would be any changes to the uses on the tax lots where the rental residences were located and Mr. Humbert said they would stay the same.

Commissioner Lee explained that when the valley started using irrigation instead of ditches it cut back on flows from the river; they did a bypass. The less water taken out the less tail water goes through. Discussion followed.

Commissioner Standley referenced a letter from DEQ which stated that according to their observation, the area around Mr. Humbert's property was primarily residential development. He asked if that had happened over the last few years or if it was grandfathered in. Mrs. Johnson said that the staff report lists the uses that are currently on the property from the information shared by the applicant. Also included is the response by the county which lists what is currently on the property as well as the permits that were issued for the mobile homes. Discussion followed.

Mr. Foster said that Mr. Humbert purchased the property to be utilized in conjunction with their primary business which is operated out of the shop on Sunnyside Road and the mobile homes became an incidental use. That use was never a priority for Mr. Humbert. Chairman Randall clarified with Mrs. Johnson that the zoning on Mr. Humbert's current operation was RRSC and she said that it was. He asked why it was not zoned RLI when it was grandfathered in for a non-conforming use instead of RSC. She stated that the non-conforming use happened approximately three years ago. The current use on Mr. Humbert's property is not a use allowed in that zone either but they went through the verification of non-conforming use which states that the use of the land predates the zoning that was applied to the area. Mr. Humbert submitted that application for all of the parcels being shown and obtained a verification of non-conforming use not only on his commercial property where the shop is located but also on the two tax lots immediately north of there. However, it was determined by the Planning Commission appointed at the

time that the other two properties, tax lots 2300 and 2400, would not qualify because that use was not in place at the time the zoning was applied.

Mr. Foster said that one of the reasons the two properties were not addressed was because of the solid waste violation they had at the time. Mr. Humbert was required to remove the solid waste from the property and get certification from DEQ that they had successfully complied and cleaned up the parcel.

Chairman Randall said that cleaning up the property was good but in his opinion Mr. Humbert's operation was Light Industrial (LI) so he questioned why they were looking at changing the zoning to RRSC instead of RLI (Rural Light Industrial)? Part of the applicant's argument was current use and enhancing his current use so logically RLI should be considered. Mr. Foster said that his point was well taken and that possibility had been discussed in the past but since Mr. Humbert only wants to park equipment there, which can be done in a commercial zone, it seemed more practical to convert to RRSC.

Chairman Randall asked what would happen to the mobile homes on the property if this zone change was made. Mrs. Johnson answered that the mobile homes would be grandfathered in and could be replaced if destroyed as long as replacement did not make the parcel more non-conforming, but no new residences could be placed. Mr. Foster reiterated that the housing was incidental to the property and Mr. Humbert stated that the mobile homes would not be worth replacing.

Commissioner Lee asked Mr. Humbert when the orchards had been removed and he answered that it was around 20 years ago.

Commissioner Standley stated that they would like to make positive changes but did not want to impact the existing farming operations in the surrounding area. His concern was because there were so many different tax lots and that maybe it would be easier to use the property if it was combined into one large tax lot. By doing so, it would remove the possibility of it being divided into smaller developments that might impact the neighboring properties.

Mrs. Johnson explained that the RRSC zone has a minimum parcel size of one acre and if this were approved for a rezone to a commercial designation the two smallest parcels, which are 1.25 acres each, could not be partitioned further but the other parcels could. The county does not want to limit them and say that if they combine everything into a single tax lot this rezone will be approved. Commissioner Standley said that he introduced the subject only as a means to limit the high usage impact on the neighboring crops. Mrs. Johnson said the amount of the usage would probably be dictated by DEQ and whether or not the parcels would be able to have a septic system and be fully developed on each of those parcels.

Chairman Randall asked Mrs. Johnson if the idea of rezoning to RLI had merit and she said that it did if the argument was for Mr. Humbert to acquire the kind of zoning that

would allow him to expand his business but that is not what was before them or what had been reviewed. Chairman Randall said he agreed with Commissioner Standley's concern about the multiple parcels.

Mrs. Mabbott said that the Department of Land Conservation and Development (DLCD) is recommending the applicant withdraw their request and consider other options. For example, they could withdraw and request a Light Industrial zone if the Planning Commission thought that would be more appropriate. But they would still be required to address the 660 Division 4 rules and to provide the traffic studies. ODOT would not support any changes until a traffic study was completed. A traffic impact study is required whenever there is a legislative change. The study would look at any future potential uses allowed in the zone being proposed and take the guess work out of traffic impacts anticipated by future development. Discussion followed.

Mrs. Mabbott noted that there was already a lot of traffic at the intersection in question. When the transportation planning rule was originally adopted it looked at the situation. If, however, the zoning is changed allowing for uses that could potentially increase retail business in that area the amount of traffic could easily double requiring a stop light and who would pay for it? Discussion followed.

Mr. Foster said that although Mrs. Mabbott and Mrs. Johnson had recommended a traffic analysis study be done they had elected not to do one and had asked for an exemption to the traffic impact study because there is a great deal of expense involved and because there were no significant changes in the use being proposed. It would also be a financial hardship to require the Humbert's to make the necessary improvements on Sunnyside Road when they were just trying to clean up the property and get it set up so they are fully in compliance as much as possible; it seemed an undue burden on a single applicant. He said they were prepared to ask for a continuation and supply the needed information if it would result in a more favorable consideration. Discussion followed.

Commissioner Marlatt asked Mr. Humbert how long he had owned the property and he answered that he had purchased the first piece of property where the shop is located in 1974 and the remaining properties 1981. Commissioner Marlatt said that Light Industrial made a lot more sense except for tax lot 2300 which has Hwy 11 frontage property, a portion of which is already RRSC.

Commissioner Lee said from what he had gathered that the Humberts wanted to keep things running as they had been in the past without expansion or change and Mr. Humbert agreed. Commissioner Lee said that ground is hard to classify as EFU because the land to the west was owned by a relative who has always had trouble with trees dying even though he has dedicated water rights. Some of the ground is shallow and some is rocky and the water does not absorb but runs off.

Chairman Randall called for proponents.

**Proponent testimony:** Marge Roff, 14 SW 9<sup>th</sup> Avenue, Milton-Freewater, OR said that she was involved in trying to get the Urban Growth Boundary (UGB) moved further north so they would eventually be able to supply water and sewer to the two mobile home parks on Appleton Road and Crockett Road. She said that it was her belief that this rezone to commercial was an excellent idea for the next 50 years aiding in growth and the development of jobs in the Milton-Freewater area.

Chairman Randall said that everyone there would like for Mr. Humbert to be able to move forward with his plans but the Planning Commission had to weigh beyond the testimony in this room and take into consideration that LCDC can reverse the ruling. Their goal is to figure out a reasonable way to solve this for Mr. Humbert.

Chairman Randall said his comment to staff was that as proposed, he did not believe that the application would be approved by LCDC. He said he was still in favor of changing the zoning to Light Industrial and the application would have more merit if it was resubmitted. Mr. Foster said they would like to ask for a continuation so they had some time to present supplemental information regarding the concerns of the Planning Commission.

Chairman Randall said the Planning Commission takes the letters received from the different state agencies very seriously and know that even if they approved this they would be facing an uphill battle in the near future.

Mrs. Mabbott suggested that if the continuance was granted she would be happy to convene a meeting with ODOT and DLCD. She would also like to have DEQ and the City of Milton-Freewater at the meeting because this was also a high-nitrate, very poor water quality area so they would need to look at what the possible effects if these parcels were developed. There is a pending petition to expand the city limit well into the urban growth boundary because of some failing water systems. One thing that needs to be discussed with the state agencies and the land owner is if they would be better off to rezone the property now or wait to bring it into the urban growth boundary at some point in the future.

Commissioner Standley said he was predisposed at this point to say that he is fairly convinced that the land was not best suitable for agriculture and that they were proceeding on the grounds that the land could be used for a different purpose; not specifying anything more than that but just to take a step forward. He asked for input from the rest of the Commission. Chairman Randall stated that he was in agreement with Commissioner Standley; that the change from EFU was somewhat applicable but there were more studies and work that needed to be done. Commissioner Lee said that in the future, Mr. Humbert's family may want to further develop the property so Light Industrial may be the correct way to go. Commissioner Standley said that in all fairness, not everyone wanted to have drop boxes left next to them so the proposed land might be a good place to have them because it is a sheltered area that is mostly out of sight. Commissioner Marlatt agreed saying that assuming the complicated water right issue was resolved, the future use as an agricultural land was not practical. He said that it was also

his opinion that tax lot 2300 would be the only one that could be changed to a retail environment.

Mr. Foster was appreciative of Mrs. Mabbott's offer to convene a meeting with state agencies. He said that they could amend the application after the meeting to request a different zone change if that will accomplish Mr. Humbert's purpose. Their goal is to get this cleaned up and set the pace so that his business can move forward.

There was discussion about the ability of a land owner to drill a well within 5 miles of the city of Milton-Freewater. Mrs. Mabbott said that because the property was within 5 miles of the city well, the city would have the ability to challenge a water right. The parcels were developed long before the zoning and it may be that after the meeting with the state agencies they would be able to come back with a proposal to modify instead of resubmit the application. Mr. Foster added that they could modify their request and provide supplemental testimony.

Mrs. Mabbott said that one option might be to do a limited use overlay zone which was done for another applicant where they took an exception to Goal 3; that included Class 7 soil which hadn't had a water right or been farmed in 40 years. The outcome of the agency meeting in that case was, rather than taking an exception to rezone the area for Light Industrial they rezoned at least half of the property Light Industrial with an exception that allowed only that specific use. So having a limited use overlay zone might be an option. Discussion followed.

Mrs. Mabbott said that the county was willing to put together the meeting with the applicant and the state agencies but the bar was set very high. Chairman Randall said that the Humbert's had been up against LCDC in the past and it was an uphill battle. Mrs. Mabbott agreed and said that by having the agency meeting first they could decide how to move forward.

Chairman Randall asked Mr. Foster if it was their request to continue the hearing and he said that it was. Mr. Foster asked that the time be set for a minimum of 60 days. Commissioner Randall granted the request for the continuance.

Mrs. Johnson addressed Chairman Randall and stated that the Walla Walla River Irrigation District water rights certificates were Exhibit 6 and that the supplemental testimony introduced by Mr. Foster be named Exhibit 5.

Mrs. Mabbott asked that the Commissioners retain the part of their packet pertaining to Mr. Humbert's hearing and that planning staff would update their exhibit list and more than likely have material to add to it.

Commissioner Danforth made a motion to accept the record as presented along with the supplemental exhibits. The motion was seconded by Commissioner Lee. It passed unanimously.

Commissioner Lee moved to keep the record open and continue the hearing to a later date. Commissioner Danforth seconded the motion. It passed unanimously.

**Adjournment:** Chairman Randall adjourned the hearing at 9:19 p.m.

Respectfully submitted,

Connie Hendrickson  
Administrative Assistant

*Adopted by the Umatilla County Planning Commission on August 22, 2013.*