

**UMATILLA COUNTY PLANNING COMMISSION**  
**Meeting of Thursday, September 27, 2012**  
**6:30 p.m., Umatilla County Justice Center, Media Room**  
**Pendleton, Oregon**

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**COMMISSIONERS**

**PRESENT:** Frank Kaminski, Clinton Reeder, Gary Rhinhart, David Lee, Randy Randall.

**ABSENT:** David Lynde, John Standley, Tammie Williams, Don Wysocki.

**STAFF:** Tamra Mabbott, Richard Jennings, Connie Hendrickson.

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**CALL TO ORDER:**

Chairman Randall called the meeting to order at 6:30 p.m. and read the opening statement.

**NEW HEARING:**

- CONDITIONAL USE PERMIT, #C-1204-12 and a PLAN AMENDMENT, #P-106-12 application submitted by DENNIS INGRAM. The request is to add a quarry to the County Inventory of Significant Sites and to review the site as a Small Significant Site (less than 500,000 tons of aggregate to be removed) through a Comprehensive Plan amendment. Also an application for a Conditional Use Permit to establish a Mining Operation will be reviewed. The operation will consist of an extraction area, stockpile area, weigh scale and a shop (60 x 60). The site plan shows a “watchman’s quarters” (40 x 60) - The EFU Zone does not allow for this type of dwelling at the aggregate site and will not be reviewed as part of this decision. The subject property is located south of Stafford Hansell Road and west of Colonial Jordan Road described as Township 4 North, Range 27 East, Section 36, Tax Lot 700 and 800. The site address for Tax Lot 800 is 28598 Stafford Hansell Road. The property is zoned EFU (Exclusive Farm Use Zone).

There were no abstentions, declarations of ex-parte contact or objections to the jurisdiction of the Planning Commission.

**Staff Report:** Richard Jennings, Senior Planner gave the staff report explaining that the application is for a small significant aggregate site which requires a Conditional Use Permit and Plan Amendment in order to add it to the Comprehensive Plan inventory of significant sites. He stated the site involved two tax lots which are zoned Exclusive Farm Use (EFU) and described their size and location. He referred to the site plan which showed the construction area, the current location of the structures on the property and the proposed locations and access to the property if the permit is approved.

A small significant site is limited to extracting no more than 500,000 tons of aggregate. For verification of compliance, the Conditional Use Permit would require annual reviews providing documentation of the amounts extracted.

The processing equipment will be several hundred feet from Stafford Hansell Road and because there is no residentially zoned property in the area no screening would be required. The dust will be mitigated by watering. There is an irrigation water right on the property that a portion will need to be transferred to an industrial water right. One of the conditions of the permit is for a water truck to be present until the water right transfer is complete. DEQ (Department of Environmental Quality) also requires dust control for air emissions. An access permit onto the road is required and since Stafford Hansell Road is paved an apron of at least 25 feet must be provided to protect the edge of the county road from damage.

A DOGAMI (Department of Geology and Mineral Industries) permit will be obtained and they will handle the reclamation of the site. A copy of that permit will be provided to the county. There will be no restrictions for hours of operation for this project and any lighting added to the site will need to be shielded to prevent glare onto the roadways or adjacent property. Other conditions of the permit pertain to the eventual closure of the mining operation and deal with removal of the refuse and debris at the site.

Commissioner Rhinhart asked if there was a size requirement for the site since the aggregate project was to be located on two tax lots. Mr. Jennings stated there was not. The limitations on the site pertain to the amount of aggregate extracted not the size of the extraction site. At the time the site plan was submitted it showed an existing residence, the aggregate pit, the maintenance shop and the scale house all on tax lot 800. It also showed a proposed watchman's quarters but that type of dwelling is not an allowed use in the EFU zone so they would be submitting an updated site plan to the County. Commissioner Reeder asked who lived in the existing residence and Mr. Jennings stated that it was a rental.

Commissioner Rhinhart asked about another aggregate pit within one half mile of this site. Mr. Jennings explained that it was owned by the BLM (Bureau of Land Management) and was recently used by ODOT (Oregon Department of Transportation) for their overlay project on I-84 and it has been exhausted.

**Proponent Testimony:** Rebecca Place, 77258 Countyline Road, Hermiston, OR 97838. Ms. Place clarified that when they were originally looking at this aggregate project the neighboring gas station was not in operation. It has since reopened so they decided to move the shop, scale house and access road further away to the west so it will not affect their business at all.

Commissioner Rhinhart commented that the site plan showed the excavation pit going into the pivot area and inquired as to whether or not that land was currently being farmed. Ms. Place said that it is being farmed but they had a farm lease agreement with Mr. Ingram. They will excavate around the circle as long as possible; probably around seven

years. At that time the farming circle will be moved so the farm ground will not be lost. He asked if the pit was Mr. Ingram's project and Ms. Place said that it was her business called Three Girls Rock that she had made these arrangements with Mr. Ingram.

Commissioner Rhinhart asked if the rental could be used for the watchman's quarters and Ms. Place said that was a possibility. They have trouble with both theft of fuel, copper wiring, etc. and vandalism at their aggregate sites. They will put security fencing around the area of the shop and scale house.

Chairman Randall asked if rock had been previously extracted from this site and Ms. Place answered that it had not. Mr. Jennings said that the file contained results from the extraction testing but it had not been included in the findings. For this type of pit the only significance is the amount of rock extracted and making sure that the soils in the area are not high value.

**Opponent testimony:** Kamaljit Singh, 1903 Jadwin Avenue, Richland, WA 99354. Mr. Singh stated he was the operator of the nearby gas station and that he had a couple of concerns; the entry to the pit and the dust problem. He said that Ms. Place had already addressed moving the point of entry and he was in favor of the proposed new access. Regarding dust control, he asked if a row of trees could be planted to form a barrier and help to block the dust. Discussion followed.

Chairman Randall asked Mr. Singh if he had objections to the pit being located there and he answered he did not as long as the entrance was moved and the dust problem could be alleviated.

Commissioner Rhinhart asked how far the fueling station was from the aggregate pit and after discussion it was determined that it was about one quarter of a mile. Chairman Randall added that if a row of trees were planted soon, they would have time to grow before the operation moved east on the lot toward his fueling business and the dust became a problem.

**Close of Hearing and Deliberation:** Chairman Randall asked Ms. Place if she wished to comment on Mr. Singh's testimony. She stated that they were agreeable to planting a row of trees. She also said they have many other pits and their dust control measures are more than adequate. They have never had a complaint from anyone around their aggregate pits. They have dust control on their crushers and water all the roads. They have separate equipment for each site. Mr. Jennings said that permitting from the state (DEQ) also requires dust control. Ms. Place said that even with their dust control measures, they were willing to plant trees, as well.

Commissioner Rhinhart asked what the hours of operation would be for this site. Ms. Place stated that they would be running during the day only.

Commissioner Reeder asked if there were any applicable state noise standards for the operation of their aggregate pit. Ms. Place said that DEQ has a noise standard for

crushers and they do the noise testing as a part of the permitting process. Mr. Jennings said there was a subsequent condition of the permit requiring Three Girls Rock to receive all of their state permits. A screen of trees could be planted as a condition of approval, as well. Another requirement will be for the company to provide a dust control plan to the county as another condition of approval. Commissioner Reeder suggested that the row of trees for mitigating dust and noise be made condition number three of the permit and Mr. Jennings agreed.

Commissioner Rhinhart made a motion to approve the Conditional Use Permit with the changes made and recommend to the Board of County Commissioners to adopt the Plan Amendment. Commissioner Lee seconded the motion. Question called. The motion passed 5:0.

### **APPROVAL OF MINUTES:**

The minutes of the Planning Commission hearing held on August 23, 2012 were approved by consensus.

### **CONTINUED HEARING:**

**Staff Report:** Tamra Mabbott, Planning Director gave the staff report stating this was a continued hearing from April 2012. She mentioned the memo in the Commissioners' packets which gave an overview of the history of the Go-Below process to this point, including the Planning Commissions' recommendation to remove the western part of the county from the proposed plan. By eliminating the west county and focusing just on the east county, the amount of acreage was reduced from about 31,000 acres to a little over 10,000 acres. There were no changes in the number of EFU-10 parcels. The number of EFU-20 parcels was reduced to 132 and of those there are only 11 which are large enough to be divided to create another 20 acre parcel.

Previously Grant Young from the DLCD (Department of Land Conservation and Development) had suggested that the state would need more data to quantify the economics of the farm parcels. Mrs. Mabbott and Mr. Jennings met with Clive Kaiser, Professor and Extension Agent at the OSU Extension Office in Milton-Freewater. Mr. Kaiser agreed to attend tonight's hearing and address the Planning Commission to give them more information regarding the economics of the proposed go-below acreage in the EFU region of the east county. Mr. Jennings had received data from the USDA which specified the types of crops, number of fields and average field size of the parcels in the EFU-10 and EFU-20 zone. The data showed that there are still a large variety of crops in the area. A map of the area north of Milton-Freewater known as the Orchards District which has the EFU-10, EFU-20 and EFU-40 acre parcels was shown on the overhead screen. Fourteen of the parcels are 40 acres or larger and would be the main focus if the Planning Commission chose to pursue an EFU 20 designation. Justifying a 10 acre parcel as an economic unit would be difficult.

Pictures of the fourteen parcels had been taken which showed what was currently being grown on each of them. Mrs. Mabbott described the pictures and discussion followed.

There was a question about how many parcels could potentially be created and Commissioner Rhinhart said originally the citizens had requested that the Planning Commission see if the go-below process was feasible in Umatilla County. He said he was concerned that it would not be a worthwhile endeavor for a small number of parcels. Discussion followed.

Mr. Young said that it would be an economic argument and a determination would have to be made as to whether or not a smaller parcel size would maintain and enhance the commercial- agricultural enterprises that are in the area.

Commissioner Reeder clarified that the task set before the Planning Commission was to set the go-below process in motion and their primary decision was whether or not to let 20 acres be designated minimum economic lot size and the standard that would apply to that area. That designation would mean that anything that was 20 acres or smaller would not be divided further and would put the focus on the parcels that were 40 acres or larger that could be divided. He noted that in that area there were a relatively small number of parcels that met those criteria.

Commissioner Kaminski asked about the area the USDA report covered. The data showed that they looked at 804 agricultural fields that were reviewed by different crops with the average parcel size being 9.6 acres. Mrs. Mabbott said the Planning staff had provided a map to the USDA which outlined the EFU 10 area and that most farmers are farming more than one parcel.

**Consultant presentation:** Clive Kaiser, OSU Extension Agent, 418 N. Main St., Milton-Freewater, OR 97862. Mr. Kaiser said that a commercial, specialty-crop farmer in the orchards district could make a gross profit of approximately \$5000.00 per acre annually. However, this figure varies depending on the value of the crop being grown and it takes a number of years to show a profit. For instance, when considering the economics of wine grapes, over time the farmer will actually lose about \$100.00 per acre when establishing the crop from scratch. The money is not in growing the grapes it is in producing the wine. The profit margin also depends on the crop year and whether or not there is a freeze or some other factor that affects the amount of fruit produced. It is all about supply and demand.

One consideration for the 20 acre parcel is if there is a dwelling on the property you can lose about a half an acre of that for a yard and garden. The farmers with the 20 acre parcels are making an okay living because the wife generally works outside the home to bring in income and supply health benefits for the family. If depending solely on the income from the crops on those parcels it would not be sufficient to provide an adequate living in the Milton-Freewater area. The farmers who started with a 20 acre parcel and have purchased additional land and are farming 40 or 80 acres are the ones who are

making money. He said he does not believe that a 20 acre parcel of a specialty crop is a viable unit or sustainable into the future.

Mrs. Mabbott stated that what Mr. Kaiser was telling them was consistent with the report he collaborated with Bruce Sorte to write. The conclusion of the report was that a 20 acre unit might be able to make up half of an income, assuming there are other sources of earnings, as well.

Commissioner Lee asked what the average value per acre was for an established cherry orchard. Mr. Kaiser said that each parcel would have to be assessed separately depending on the age of the parcel and the spacing of the trees. Commissioner Lee said he wondered how the young farmers would be able to purchase a large enough parcel of property to start farming. Between the cost of the farm and the equipment to run the farm it can be more than the value of their land.

Commissioner Rhinhart asked about the 60:1 value added for wine grapes. Mr. Kaiser said the value added is for combining the crop with the wine that it produced. Commissioner Reeder confirmed that was the gross value and Mr. Kaiser said it was.

Mr. Young asked what percentage of acreage is planted in little vineyards. Mr. Kaiser stated that there were 123 wineries registered and 85 vineyards in the Walla Walla Valley. Mr. Young said when discussing the enhancement of agricultural enterprise, if other areas have vineyards on 2 ½ acre plots what could someone potentially do with a 10 acre plot of land. He said you have to look at the trend and if the economics of the small vineyards are working elsewhere why wouldn't they work in this area. Mrs. Mabbott stated that in Oregon a person is required to have at least 15 acres of grapes in order to qualify to permit a winery. That was determined in the last legislative session by Senate Bill 960.

Commissioner Kaminski asked if there were a reason their focus had not been on livestock on these parcels. Mr. Kaiser said the parcels planted in specialty crops produce a high-value crop and the animals do not. Raising animals requires about 2 ½ acres of land per animal. Those with more animals than that per acre are bringing feed in from elsewhere.

Commissioner Reeder said this was the same argument they had 30 years ago. The Sorte Study assumed farming 20 acres was economically viable if it supplemented meaningfully a family income. If the wife worked and the 20 acres were planted in a high-value crop you could argue that the family makes a reasonable living. A decision had to be made that in the smaller acreage areas the concern was not that the acreage size was a stand-alone economic unit it was that the acreage constituted a commercial activity in agriculture. Discussion followed.

Mrs. Mabbott asked Mr. Kaiser if there would be a net benefit to that farming economy in allowing the 40 acre parcels to be partitioned into 20 acre parcels. Mr. Kaiser answered that the farmers who partitioned their land now will probably be set for life but those

coming into it will struggle. The people who come into his office now searching for land are looking for a lifestyle which is something offered in this valley because of the infrastructure, the resources and the beauty of nature as well. That lifestyle is what appeals to a lot of people. Then the commercial farmers in the area have to spray their crops and the people on these small parcels who have come from the cities don't understand this and complain. He fields the phone calls of these complaints because they do not call the farmers. Discussion followed.

Richard Jolly, a member of the audience stated that partitioning a parcel from 40 to 20 acres did not allow for placement of a home on the property. Mrs. Mabbott confirmed that was correct. Mr. Jolly said that if the farmer did then partition his land to sell it he would have to sell it as a farm. He said some farmers were just leasing their land to be farmed instead of selling it. Discussion followed.

Commissioner Reeder said he thought there should be a maximum lot size and not a minimum lot size. The maximum lot size gives someone the rural exposure and makes sure the family will stay rural but they don't have the responsibility of a large acreage. Discussion followed.

Mr. Jolly said unless the farm is handed down it is difficult for someone to get started in farming. There are young people who would like to have that lifestyle but it is outside of their means. Commissioner Rhinhart said that young farmers just starting have trouble getting loans from the bank because they will be required to accumulate their equipment and develop their expertise before they will loan them money to buy land. Because of this they will have to lease their land for a number of years before being able to purchase it.

Norm Kralman, a member of the audience, said young farmers should not be limited as to what they can do. Many people who are doing well now started with small acreage and added to it over time. He would like to see young people have the same opportunities he had. Discussion followed.

Mr. Kaiser said he didn't think anyone was suggesting taking their opportunity away. The only thing he had suggested is creating an opportunity for the people to have smaller lots.

Mr. Young said during a tour of the area there was some discussion and people wondered about the possibility of converting some of the areas which already have small nonconforming lots into smaller exception areas and breaking larger lots into smaller lots. That would be trying to create exception areas based on what is there. This would make it an exception to the Goal 3 process which is the farm bill. It would be taking it out of the EFU zone and doing something else with it which would be virtually impossible because it is based on what exists. Mrs. Mabbott said the best they could probably do was an analysis of those areas, for instance, that are along the river and see which of the parcels are vacant and determine whether or not it would be worthwhile to move forward with the exception to rezone it to rural residential which would then allow a dwelling and address the lifestyle. Discussion followed.

Mr. Young said what they were talking about was a total of 130 new parcels. They would need to determine if that would present a threat to the commercial agricultural enterprise of the area, maintain it or enhance it. That is what the rule asks. All of the other little parcels that are out there can be bought and sold or pieces of the larger parcels could be leased. Commissioner Rhinhart said his concern was whether or not it would be a benefit to the whole area and if it would be reasonable for the county to spend the time and money to accomplish it. Discussion followed.

Chairman Randall called for a break at 8:24 p.m. They reconvened at 8:34 p.m.

Chairman Randall said they would take a few minutes to let everyone express their opinions and come up with a recommendation and some direction for the Planning Director as to where this should go. Mrs. Mabbott said if they decided they would like more information staff could provide that but they need to be specific about what they want to do. Chairman Randall said he thought they needed to decide whether or not they were going to spend a lot more time on this matter; six months to a year or more.

Commissioner Reeder said they need to determine what they want to protect. The structural areas for commercial agriculture with a minimum unit size that is sufficient to lease, farm and make a living or the housing and lifestyle issue. If their focus is lifestyle they should choose an area and create small parcels where a dwelling can be built. If you can't build a house on it then it needs to be protected for commercial agriculture and it needs to be understood that we are more concerned about commercial agriculture than lifestyle.

Commissioner Rhinhart said something that interested him was their discussion about the farmers who live on their property whose wives work in town and the benefit it was to them. They saved the money they would be paying to live in town and they put it toward farming. He said that was the only benefit that he saw and did not think there was enough benefit to put the county through spending a lot of extra time and money for just a few select lots of land.

Commissioner Kaminiski said his daughter and her husband farm quite a few parcels in the Milton-Freewater area and are looking for small parcels to purchase in order to try different varieties of grapes or apples. They have purchased a number of houses on EFU land in the Milton-Freewater area that they have taken down in order to put the land into production. They like the small parcels so they can experiment with different crops.

Commissioner Lee said he leans toward the 10 and 20 acre parcels. He is looking at it from the standpoint of the people who want to start farming. Larger parcels demand more equipment, time and money. The smaller parcels can be farmed with fewer pressures.

Chairman Randall said he agreed with Commissioner Rhinhart and thinks the economic benefit for the few amount of lots does not warrant the county's expense. He said people who want to farm will find a way just as people who want to live in the mountains find a way. The value of the lifestyle is not necessarily what they were talking about; they are

talking about preserving farms. The farming market has already been created by the ones who are leasing ground. Fifty years ago the number of people leasing ground was far less than it is today and unheard of for the most part. So the market has adjusted in creating these leases. He said they have looked thoroughly at this matter now and it might be time to put it to bed. Legislatively they are blocked from doing what they might want to do.

Commissioner Reeder asked if they don't do anything what would they have. Mrs. Mabbott said they would have the existing parcels they have had since 1993. She asked Mr. Jennings how many times someone had come into the office to request a 10, 20 or 40 acre parcel since he had been employed by the county and he answered there were none. Mr. Jennings said there had been boundary line adjustments done and if the minimum parcel size were to change it would make boundary line adjustment more difficult to do.

Commissioner Reeder asked if it was working the way it was and would they have adequate flexibility if they were to leave it alone. Mr. Jennings said it did not seem to be broken. The farmers who have the larger parcels are using them the way they are set up. Down the road they may sell them to someone who may want to divide the property but at this point they don't have very many requests to break the property up. When they did the survey of the property owners he received quite a few phone calls and he asked the ones with larger parcels if they wanted to divide their property and they did not.

There was a question asked as to whether or not this subject could be revisited at a later date. Mrs. Mabbott stated there was the option for a group of private property owners to do so. Also, if the county determines they have the time and resources they could look at Mr. Kaiser's suggestion to possibly do an exception for the parcels that are along the river. Discussion followed.

Mrs. Mabbott said that in the last 20 years there have been bills that have gone around the legislature that allow something similar to what Measure 37 allowed. Measure 37 gave people the right to place a dwelling on farm land but few people in Umatilla County filed a claim to get it done. Another solution for this area might be to request a special designation that would add a fifth category in the EFU zone and allow buildability. This would allow a parcel legally created by a certain date to qualify for a dwelling.

Norm Kralman talked about the large number of people who originally turned out for the meetings that were held regarding the go-below process when it was getting started. Mr. Jennings stated that many of the people who attended the meeting at Blue Mountain Community College (BMCC) did not understand what the meeting was about and when they found out they realized that it did not apply to them because they lived inside the city limits. Mrs. Mabbott added that many people had attended the meeting mistakenly thinking the go-below process would create a parcel of land that would allow them to place a house on it. Discussion followed.

Mrs. Mabbott said there had been data provided and the Planning professionals had looked at the Administrative Rules. Based on the information gathered, the number of parcels that would qualify for a go-below in the east county area is relatively small.

Commissioner Reeder said if they were to leave the 10, 20 and 40 acre parcels the way they were, since no one is abusing that, nothing would change. That zoning would just be restored to the people in that area. Mrs. Mabbott said she did not think they had enough information to justify a 10 acre parcel based on these criteria so the focus would then be placed on the 20 acre parcels and there are only 14 parcels that would be affected.

Mr. Kralman said they should look into the future. Things need to change because people cannot make a living as they did in the past. One of their resources is land and some of the people who want to buy five or six acre parcels would like to place homes on them. Mrs. Mabbott reminded Mr. Kralman that the go-below had nothing to do with homesites. Mr. Kralman said that they were taking away what the people had. Mrs. Mabbott said the county had not taken anything away. The Oregon Legislature used House Bill 3661 to make those changes in 1993. There is a new set of rules in place and the county has to comply with them.

Commissioner Rhinhart made a motion not to take any action and leave things the way they currently are; to withdraw the county's application #T-11-044. Commissioner Reeder seconded the motion. The motion passed unanimously.

**Other Business:** The Commissioners were given a copy of the Planning Commission By-Laws and told that if they want to revisit them at some point they can do that.

Mrs. Mabbott said there was still no decision back from LUBA on the Hatley appeal, the second appeal which dealt with the wind siting standards but they were expecting an opinion and an order back from LUBA sometime in October.

Last week the Board of Commissioners signed the findings for the setback adjustment and it is still within the 21 days so could be appealed to LUBA.

Commissioner Kaminski asked about the WKN transmission line and Mrs. Mabbott answered that LUBA had reversed the county's decision.

Commissioner Rhinhart asked Mrs. Mabbott about the legislative concept that she had drafted that requests the statutes and rules regarding the siting of transmission lines be clarified or changed because the permitting process is convoluted. Mrs. Mabbott stated that she and Commissioner Givens had presented the concept to a sub committee of the Association of Oregon Counties. Then a group of utilities, co-ops, the renewable industry, the power industry, counties and the Department of Energy will be looking at all of the issues raised.

There was discussion regarding the two-mile setback, the remand from LUBA and the setback adjustment.

Chairman Randall adjourned the meeting at 9:18 p.m.

Respectfully submitted,

Connie Hendrickson  
Administrative Assistant

*(Adopted by the Planning Commission on October 25, 2012)*