

**MINUTES**  
**UMATILLA COUNTY PLANNING COMMISSION**  
**Meeting of Thursday, August 26, 2021, 6:30pm**  
**Umatilla County Courthouse, 216 SE 4<sup>th</sup> Street, Pendleton, Oregon**  
**VIRTUAL MEETING VIA ZOOM**

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**COMMISSIONERS**

**PRESENT:** Suni Danforth, Chair, Don Wysocki, Vice Chair, Hoot Royer, Jon Salter, Tami Green & Sam Tucker

**ABSENT:** Tammie Williams, Lyle Smith & Cindy Timmons

**STAFF:** Bob Waldher, Planning Director, Carol Johnson, Senior Planner & Tierney Cimmiyotti, Administrative Assistant

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

**CALL TO ORDER**

Chair Danforth called the meeting to order at 6:30pm and read the Opening Statement.

**NEW HEARING**

**CONDITIONAL USE REQUEST #C-1342-21; KEVIN & HEATHER JAMES, APPLICANTS/ OWNERS.** The applicants request approval for the use of a Recreational Vehicle (RV) as a Temporary Hardship Dwelling on property located at 53613 Rosebud Lane, Milton Freewater, Oregon 97862. The subject parcel is northeast of the City of Milton Freewater and can be found on Umatilla County Assessor’s Map 6N3525D, Tax Lot 103. The applicable Land Use standards for a Temporary Hardship Dwelling on Exclusive Farm Use Zoned land are found in Umatilla County Development Code (UCDC) Section 152.617(I)(V) and Sections 152.013, 152.060 & 152.615.

**STAFF REPORT**

Carol Johnson, Senior Planner, presented the staff report. Mrs. Johnson stated that the applicants, Kevin & Heather James, request approval for the use of an RV as a Temporary Hardship Dwelling based on a medical need for Mr. James’ parents, Kenny & Lenora James. The property is a 2.5 acre EFU Zoned parcel located at 53613 Rosebud Lane in Milton Freewater. She added that there is a correction of note to the applicant’s address in the Preliminary Findings and Conclusions on page 5 of the Commissioner’s packet. The city has been corrected to Milton Freewater and she will include that change in the Final Findings.

Ms. Johnson stated that the specific Hardship Dwelling Conditional Use standards can be found in the UCDC under Section 152.617(I)(V). Staff’s Preliminary Findings outline the applicable criteria including; the medical need for justification of the hardship, authorization to connect the hardship dwelling to the existing septic system, ongoing review of the Conditional Use Permit

for compliance, and removal or proper storage of the RV used as the Temporary Hardship Dwelling once the hardship no longer exists.

Mrs. Johnson stated that administrative review of the request was mailed on June 9, 2021 as notice to surrounding property owners and affected agencies. The notice resulted in two comments; one from a notified neighbor in opposition to the request and another informational comment provided by Umatilla County Code Enforcement (page 13-23 in the commissioner's packets). She added that an additional comment was received via email the day of the hearing from a neighbor in support of the James's request. That comment was emailed to Commissioners prior to the start of the hearing

Mrs. Johnson stated that comments from the opposing neighbor included concerns regarding; the status and use of the easement named Rosebud Lane, use of the James property as a business (Bulz-I Plumbing), storage and location of certain materials on the property, and questions whether Kenny and Lenora James have the type of hardship required for approval of this request.

Code Enforcement's comment letter includes information pertaining to; the active code violation on the property, the occupied RV on the property and questions concerning the hardship dwelling use for only part of the year. Mrs. Johnson explained that the need for a Temporary Hardship Home can be subjective and the level of needed assistance can vary. She added that the medical need which qualifies an individual for a Temporary Hardship Dwelling is expected to imply the need for consistent year-round assistance.

Mrs. Johnson stated that the Planning Commission may approve or deny the applicants' request. Approval must be based on meeting all of the criteria outlined in staff's Preliminary Findings and Conclusions on pages 11 & 12 of the hearing packets. She explained that staff has a suggestion to modify Precedent Condition #1 on page 11 of the Commissioner's packets and she has plans to discuss this in more detail later in the hearing.

Commissioner Tucker asked if the applicant would be willing to provide evidence concerning the medical need associated with this request. Mrs. Johnson stated that staff received a letter from a physician stating that assistance is recommended for Kenny and Lenora James. She added that she was hesitant to divulge additional details pertaining to the medical need due to privacy standards established under the Health Insurance Portability and Accountability Act (HIPAA) to protect sensitive health information from being disclosed without one's consent or knowledge. The physician's letter was intentionally not included in the meeting materials available to the Planning Commissioners and public.

Commissioner Wysocki asked if both dwellings on the property are connected to the same septic system. Mrs. Johnson stated that she does not know, but assumes both dwellings are served by the same septic system because the manufactured home on the property was originally approved as a Temporary Hardship Dwelling. At a later date, the Planning Commission approved a request for the manufactured home to remain on the property as a second dwelling. She pointed out that

Mr. James acquired the subject property after these decisions were made and he was not the applicant for those requests. She added that if this request is approved the RV will be required to connect to an existing septic system on the property. The process will include inspection and approval of the septic system by Umatilla County Environmental Health.

Chair Danforth asked when the Planning Commission approved the request for the manufactured home to be used as a permanent second dwelling on the property. Mrs. Johnson stated that the request was approved in 1996.

Commissioner Tucker asked staff if the applicant would be willing to waive their protections under HIPAA and share more about the medical needs associated with the hardship request. Mrs. Johnson stated that she would discuss the matter with Doug Olsen, Umatilla County Counsel, prior to making any decisions related to disclosing additional medical information.

Commissioner Wysocki asked if the physician's letter expresses enough information to demonstrate that the applicant clearly requires assistance. Mrs. Johnson stated that she will need to consult with County Counsel before she can provide an answer to that question. She explained that if the Planning Commission has additional questions about whether there is a legitimate medical need, they have the option to continue the hearing. This would allow for staff to consult with County Counsel and the applicant about disclosing more details pertaining to the physician's letter and medical needs.

Chair Danforth pointed out that there is an error on page 8 of the Commissioner's packets, addressing Temporary Hardship Dwelling Conditions under UCDC Section 152.617(I)(V)(2)(e). The last paragraph of the response reads, "...once the hardship no long exists...", and should be changed to, "no longer exists". Also in the packets on page 10, addressing Additional Conditional Use Permit Restrictions under UCDC Section 152.615(H), the response reads, "...property for a the term...", but the 'a' should be removed. Mrs. Johnson agreed to make those edits before producing the Final Findings and Conclusions.

Commissioner Wysocki asked if this request were approved, would staff consider a request in the future to replace the RV for a larger model. Mrs. Johnson stated that there are no specific restrictions tied to the model or size of the RV. She explained that there are property line setback standards applicable to where the RV is placed on the parcel. Other than that, the only restriction to the size of the RV would be related to the parcel size and land space available.

Commissioner Tucker asked if the applicant could submit a future request to replace the RV with a manufactured home. He also asked for more clarification about parcel size limitations concerning this specific request. Mrs. Johnson stated that this request is for approval of an RV. However, if the applicant wanted to swap the RV for a manufactured home in the future, they would need to amend this Conditional Use Request. Additional considerations would be applied to any new request including proof of septic system viability and setback standards. With regard to parcel size limitation, she stated that the subject property is a 2.5 acre parcel with existing

structures including two dwellings, some outbuildings and storage. The applicant has placed the RV next to the larger outbuilding located on the west side of the property. She explained that if they wanted to amend the request to replace the RV with a larger manufactured home, they would be required to demonstrate to staff that there is adequate space to accommodate the larger structure. Additionally, if or when a Conditional Use Request is amended the applicant is required to submit new paperwork addressing all standards applicable to the new request.

Commissioner Green inquired about regulations for setback standards with regard to statements made in the comment letter from Melanie Hein (Commissioner's packet page 13-14). Ms. Hein stated, "...Mr. and Mrs. James have another camp trailer that is placed inches from our property line (located on the southern border of the James property)." Commissioner Green asked if there will be a condition of approval to require that the applicant relocate the camp trailer further from the fence line. Mrs. Johnson stated that the RV referred to in Ms. Hein's comment is a different RV which is being stored on the property near the southern property line and she is unsure who the owner is.

**Applicant Testimony:** Kevin James, 53613 Rosebud Lane, Milton Freewater, Oregon, 97862. Mr. James stated that he is applying for the Temporary Hardship Dwelling for his parents, Kenny and Lenora James. He stated that his parents are getting older and their health is not good. He explained that they are able to live on their own but they still need help on occasion. He stated that they have been going back and forth between his home and his sister's home. He expressed that he believes his parents would be better off living on his property because his family is home most of the time. He stated that he and his wife, Heather, plan to take care of his parents along with help from his son who occupies the manufactured home on the same property.

Mr. James clarified that the property contains two separate septic systems. He also stated that he and his wife own the camp trailer being stored on the south side of his property and nobody is living there.

Commissioner Danforth asked which septic system will serve the RV used for the Temporary Hardship Dwelling. Mr. James stated that the septic system serving the manufactured home is closest to the RV site. However, he plans to work with Umatilla County Environmental Health to test septic viability for both systems and the results will determine which system they utilize.

Commissioner Tucker asked if the RV will be permanently placed on the property or if his parents have plans to occasionally use the RV for travel. Mr. James said it will be hooked up and permanently stationed on the site. Commissioner Tucker asked if his parents use a second RV for travel. Mr. James confirmed that is correct and the second RV that his parent's use for travelling it is also stored on the property. He stated that they used the RV to travel with family, last fall. Commissioner Tucker asked when the last time his parents traveled alone in the RV was. Mr. James stated that his parents last used the RV alone approximately two to three years ago. Mr.

Tucker asked where his parents live at this time. Mr. James stated that his father lives in Hermiston and his mother lives in the Tri-Cities area.

Commissioner Tucker asked Mr. James what his position would be with regard to releasing additional medical records in support of his request. Mr. James asked Commissioner Tucker to clarify if he is providing legal representation to someone at the hearing. Commissioner Tucker explained that he is a Planning Commissioner and as a member of the Planning Commission it is his responsibility to ask relevant questions in order to make a decision. Mr. James stated that he will speak with his parents to determine if they are comfortable releasing the physician's letter to the Planning Commission.

Commissioner Tucker asked Mr. James if his parents plan to stay in the RV for the foreseeable future, or if this is a temporary action with plans to eventually move into more permanent dwelling. Mr. James stated that it depends on the state of his parents health.

**Opponent Testimony:** Melanie Hein, 53608 Rosebud Lane, Milton Freewater, Oregon, 97862. Ms. Hein stated that she has concerns about the high volume of vehicles using the shared driveway. She believes this is due to the applicant operating a business the property. She claimed to witness a minimum of 20 trips in and out of the property daily. She stated that she saw Mr. James's parents driving vehicles recently and she is aware that they lived in the trailer on the subject property for approximately 6 months last year. She claimed that Mr. James's property is crowded with many older vehicles and she has had trouble using the single-lane driveway which provides access to her property.

Chair Danforth asked which property belonged to Ms. Hein. She replied that she lives on Tax Lot #101, located to the south of the James property and added that both properties utilize Rosebud Lane as an access point.

Ms. Hein stated that she wants to know if Mr. James's parents have a driver's license because she believes the answer would show ability or inability for them to get around independently and care for themselves. Chair Danforth stated that she feels that matter is out of the Planning Commission's purview. Commissioner Wysocki agreed and added that it would be considered personal information. The only way the Planning Commission would know the answer to that question would be if the applicant volunteered the information. Ms. Hein argued that a driver's license is public information.

**Public Agencies:** Gina Miller, Code Enforcement Officer/ Program Coordinator, Umatilla County Code Enforcement, 216 SE 4th Street, Pendleton, Oregon, 97801. Officer Miller stated that she provided comments which were included in the Commissioner's packets on page 23. She added that she is available to provide clarity or answer any additional questions the Planning Commission may have at this time.

Commissioner Wysocki asked if the violations on the property are still in effect today. Officer Miller confirmed that the violation is still active and Code Enforcement continues to investigate the case on a regular basis. However, she explained that when a person in violation submits an application for Land Use Approval intended to resolve the violation, all further enforcement action is paused.

Commissioner Tucker asked for clarification regarding the statement in Officer Miller's comments that reads, "Mr. James explained that the RV belonged to his parents, who occupied the RV when visiting. He further explained that his parents used another RV when travelling south for the winter." Commissioner Tucker asked if this activity took place in the past, or if this is something they have been doing recently. Officer Miller stated that she located the subject RV while conducting a site visit which was prompted by a complaint received by Code Enforcement. While inspecting the property she observed a wooden deck and steps (in addition to other permanent features) implying occupation of a recreational vehicle, which is not an allowed use in this zone. She noticed other issues on the property as well, and issued a Code Enforcement Warning to the owners, Kevin and Heather James. After receiving the Warning, Mr. James contacted Code Enforcement and explained that the RV belonged to his parents. He said his parents store the RV on his property and use their second RV when they travel south. She explained that she got the impression Mr. James was describing his parents as snowbirds, travelling to warmer areas during the winter months. She added that Mr. James did not mention any medical needs or hardship pertaining to his parents during that initial conversation.

**Applicant Rebuttal:** Mr. James stated that his parents do not go south for the winter. He explained that they sometimes take the RV to his sister's property in Hermiston and also use it for family hunting trips. He insisted that he did not intend to imply that his parents are snowbirds and maintained that they never travel south for the winter.

Chair Danforth asked Mr. James if he operates a business on his property. Mr. James stated that he does have a business which is licensed in the State of Washington, but did not know it was against the law to keep his work vehicles at his house. He stated that he has business supplies delivered to his property a couple times a month, but asserted that there is nowhere near the volume of traffic that Ms. Hein described. He added that he was not aware that delivery of business supplies to his home was a violation, and now that he knows he will stop the activity.

Chair Danforth asked Mr. James if his business is located in Walla Walla. He replied no, his business does not have a physical location. He rents a post office box at the Postal Annex in Walla Walla.

Commissioner Wysocki stated that before making a final decision he would like additional clarity with regard to the physician's letter. He added that he recognizes privacy laws are important, but feels more details are needed to make a decision about this particular request.

Mrs. Johnson explained that the Planning Commission can choose whether or not to keep the record open for a period of time. Keeping the record open would allow additional time for staff to determine if the requested information can be shared with the Planning Commission. She added that they can also choose whether to continue the hearing to a later date or make a final decision on the matter today. Ultimately, she explained that it is up to them to decide how they would like to proceed.

Commissioner Tucker pointed out that page 6 of the Commissioner's packet includes the standards applied to Conditional Use Permits in order to establish a Temporary Hardship Dwelling on EFU Zoned lands. The standards state that, "UNDUE HARDSHIP shall refer to unique and temporary conditions that exist which justify the need for temporary housing on a given lot or parcel. The aged or disabled person must require direct personal care in order to qualify for a temporary hardship dwelling." (UCDC 152.617(I)(V))

Commissioner Tucker stated that he is not certain this standard has been met. He feels that the applicant has not provided enough evidence to prove that they meet the definition of undue hardship and more details are required to make an informed decision either way.

Chair Danforth asked if there were any requests for this hearing to be continued or for the record to remain open.

Commissioner Salter made a motion to continue the hearing for Conditional Use Request #C-1342-21 to the October 28, 2021 Planning Commission meeting to provide adequate time for the applicant to produce additional evidence requested by the Planning Commission.

Commissioner Wysocki stated that he hopes the motion for a hearing continuance will not create additional difficulties for Mr. James or his family. Chair Danforth agreed but added that the more information the Planning Commission receives, the better equipped they will be to make a decision.

Commissioner Green seconded the motion to keep the record open and continue the hearing for Conditional Use Request #C-1342-21 to the Planning Commission meeting scheduled for October 28, 2021 at 6:30pm. Motion passed with a vote of 6:0. Chair Danforth closed the hearing.

The continued hearing is scheduled for Thursday, October 28, 2021 at 6:30pm. All those who wish to attend the continued hearing must contact the Umatilla County Planning Department in advance at 541-278-6252 for video or audio login details.

### **OTHER BUSINESS**

Mr. Waldher stated that the next Planning Commission hearing on September 23, 2021 will have three agenda items. The first is a subdivision Replat request and the other two are requests for

Goal 5 protections to be applied to Oregon Department of Transportation (ODOT) aggregate sites.

Mr. Waldher explained that ODOT has submitted applications requesting to amend the Umatilla County Comprehensive Plan to list the Butter Creek Quarry and Vinson Canyon Quarry as significant sites protected by Goal 5. The requests include amendments to the Comprehensive Plan Map to identify the site as ‘significant’ and to apply the buffer area to limit conflicting uses. Approval of these requests would also amend the Umatilla County Zoning Map by applying the Aggregate Resource (AR) Overlay Zone to the mining sites.

### **ADJOURNMENT**

Chair Danforth adjourned the meeting at 7:39pm.

Respectfully submitted,

Tierney Cimmiyotti,  
Administrative Assistant

Minutes adopted by the Planning Commission on October 28, 2021