

MINUTES
UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, January 24, 2019, 6:30 p.m.
Umatilla County Justice Center, Media Room, 4700 NW Pioneer Place, Pendleton, OR

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COMMISSIONERS

PRESENT: Suni Danforth, Chair, Gary Rhinhart, Vice Chair, Don Wysocki, Cecil Thorne, Tami Green, Hoot Royer, Molly Tucker Hasenbank, Jon Salter
ABSENT: Tammie Williams
STAFF: Bob Waldher, Planning Director, Jacob Potterf, Planner/GIS, Tierney Dutcher, 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 6:30 p.m. and read the Opening Statement.

NEW HEARING

REQUEST FOR A PUBLIC HEARING FOR CONDITIONAL USE REQUEST #C-1311-18, ELLIS HUNTING PRESERVE, APPLICANT/ JUNE MILLER ET AL, OWNERS

A “Request for a Public Hearing” was filed on November 20th, 2018 to appeal the County’s tentative approval granted to Paul L. Ellis for a Conditional Use Permit for a “Private Hunting Preserve”. The request is to integrate an additional 122 acres into an existing private hunting preserve on an adjacent tax lot. The subject property is zoned Exclusive Farm Use (EFU) and is located approximately three miles Northeast of Pilot Rock adjacent to Shaw and Rockwell Road, described as Tax Lot #3200 in Township 1N, Range 32D. Criteria for approval of Conditional Uses are found in Umatilla County Development Code (UCDC) Sections 152.060, 152.062, 152.612, 152.615, and, 152.617 (I)(O).

Chair Danforth called for any abstentions, bias, conflicts of interest, declarations of ex-parte contact or objections to jurisdiction. Commissioner Rhinhart stated that he knows both parties and would like to abstain from the hearing and moved to sit with the rest of the public.

STAFF REPORT

Jacob Potterf, Planner, stated that Conditional Use Request #C-1311-18 was submitted to the Planning office by Paul Ellis on August 27, 2018. The property owners for this application are James and Judy Miller.

Mr. Potterf stated that UCDC 152.617 (I)(O) allows for a private hunting preserve on a parcel or tract of land not meeting the definition of high value farm land. If approved, this request would result in 122 acres integrated into an adjacent hunting preserve. The newly incorporated land would fall under the same Oregon Fish and Wildlife (ODFW) license as the existing hunting preserve operated by the Ellis’ on an adjacent parcel.

Mr. Potterf stated that the application was handled administratively and Planning Staff made a tentative decision that the request met all applicable standards. On November 20, 2018, a Request for Public Hearing was submitted by a neighbor who had received the public notice. The neighbor expressed concerns about the potential for increase of noise, hours of operation, additional traffic on Shaw Road and the overall effect the activity would have on the adjacent parcels of farm land. Mr. Potterf stated that the Planning Commission is asked to refer to the UCDC, Staff Findings and other provided information to determine if the request does or does not meet the applicable standards.

Commissioner Salter asked if the intermittent noise levels will be a focus of the annual review process. Mr. Potterf stated that the annual review will be focused on the subsequent conditions of the Conditional Use Permit (CUP). The conditions in place at this time state that Umatilla County Code Enforcement will become involved if any complaints are made regarding activity outside of the designated hours of operation.

Chair Danforth asked what the ODFW hours of operation for hunting preserves are. Mr. Potterf stated that the hours vary throughout the year. Bob Waldher, Planning Director, stated that the Oregon Administrative Rules (OAR) 635-047-0005 through 635-047-0050 outline the State of Oregon's regulations for private hunting preserves. He reiterated that the hours of operation are not clearly defined. Regarding time, the only reference to regulation made in OAR 635-047-0005 (1) is that, "[t]he time and length of season allowed any given hunting preserve shall be determined on the basis of potential conflict with wild populations, provided that no open season shall be allowed between April 1 and July 31 of any year".

TESTIMONY

Applicant Testimony: Paul Ellis, Applicant, 68685 Shaw Road, Pilot Rock, Oregon and Patrick Gregg, Attorney, Corey, Byler & Rew, LLP, PO Box 218, Pendleton, Oregon. Mr. Gregg represents the applicant, Paul Ellis. Mr. Ellis stated that his father is a partner in the business and was hoping to attend the hearing but had another engagement.

Mr. Gregg stated that Mr. Ellis and his father applied and obtained approval for a hunting preserve in the year 2000 for the larger portion of the property which includes approximately 800 acres. The Ellis' have been operating the facility under the name Ellis Hunting Ranch. The purpose of the hearing is to seek approval to add an additional 122 acres to the overall preserve.

Mr. Gregg pointed out that operating a hunting preserve is a heavily regulated activity. The ODFW oversees the hunting activities and the County grants land use authorization. He believes it speaks to the professionalism of the operation that in 18 years since Ellis Hunting Ranch has been in service they have never had any Code Enforcement issues with Umatilla County or ODFW.

Mr. Gregg stated that the hunting preserve operates by prospective hunters first purchasing birds which are furnished by Mr. Ellis and then planted on the property prior to the hunt. The hunting preserve season regulated by ODFW runs from August 1st – March 31st, and this timeframe is broader than the

season allowed for wild hunts. Mr. Gregg stated that Mr. Ellis typically has hunters before, during and after the wild bird season in order to take advantage of the opportunities. He pointed out that, with approval from the land owner, this property is available to use for wild bird hunts 7 months out of the year. Therefore, he believes the use of the land will be no different than the way the land has been used for many decades. He added that this request is not for a new hunting preserve, it is an expansion of an existing preserve. Mr. Ellis believes that this small piece of acreage will provide additional benefit to his customers. He added that ODFW now offers a permit which authorizes trainers to release and/or kill game birds for the purpose of training hunting dogs year-round. Mr. Gregg stated there should be no additional impact on neighboring properties and the community.

Mr. Ellis stated that the wild bird population has been depleting and this way of hunting has become more popular. He stated that there are approximately 76 operating hunting preserves in the State of Oregon at this time. In addition to this location, he has a hunting preserve on Birch Creek and Stuart Creek. He feels the additional acreage will enhance the experience because it's a flatter area which caters to hunters who may have mobility issues.

Mr. Ellis stated that the closest residences to this additional acreage belong to him and his father. They put out 20-30 birds on an average day, but sometimes only 10. He believes there is a market for people who are lacking bird areas to go hunting. He plants the birds on the property at daylight and hunts typically begin at 9 a.m. The ODFW sets the hours allowed to hunt roughly between 30 minutes before sunrise and 30 minutes before sunset. Mr. Ellis stated that this activity does not involve continuous fire of weapons like a shooting range would.

Commissioner Green asked if they are limited on how many hunters are allowed per acre. Mr. Ellis stated that ODFW does not limit the amount, but his insurance limits him to no more than 9 hunters at any given time for safety reasons. Sometimes the groups are larger because not everyone in the group is hunting. Commissioner Green asked if they provide guides for the hunts. Mr. Ellis stated that they offer guided hunts but a majority of the hunts are groups going out on their own.

Commissioner Wysocki asked if they use male or female birds. Mr. Ellis stated that they can use both but he primarily uses male birds. Commissioner Wysocki asked for more information about the land. Mr. Ellis stated that some of the ground is part of the Conservation Reserve Program (CRP) and some is comprised of alfalfa bottoms with grass ditches. He explained that when planting birds for hunting it's best to have a confined area with good cover.

Mr. Gregg stated that the request for additional acreage does not include any construction of buildings, structures or pens. They are simply asking to add 122 acres of land into the existing private hunting preserve. He stated that OAR 635-047-0010 places limitations on the size of hunting preserves and requires that they not contain more than 1,280 acres in one continuous tract. Additionally, there must be at least one-half mile distance between licensed hunting preserves.

Opposition Testimony: Richard Doherty, 69004 Iris Lane, Pilot Rock, Oregon. Mr. R. Doherty stated that he represents Brand X Ranch, LLC which has been a family run operation for 106 years. He

provided a packet of 9 letters from surrounding property owners and residents to be added to the record of exhibits for the hearing, including; Richard and Sue Doherty (exhibit C), Dennis and Kelly Doherty (exhibit D), Brand X Ranch, LLC (exhibit E), Lisa Mendoza (exhibit F), Gordon Adams (exhibit G), Mary Green (exhibit H), Alan and Ruth Insko (exhibit I), Thomas and Christine Sutherland (exhibit J), and Mike and Barbara Morehead (exhibit K).

Mr. R. Doherty stated that the Ellis Hunting Ranch has approximately 1000 acres between 2 preserves that have already been approved and in operation. He wants to know why they need to add these 122 acres. He stated that are many homes and families tightly packed in the area. The rock bluffs and canyons channel the noise throughout the valley and it vibrates his windows. He does not believe the Ellis' are being good neighbors because he stated that they start hunting at any hour of the day and hunt every day of the week.

Mr. R. Doherty stated that he inquired to the ODFW and learned that there is no regulation placed on the number of birds that can be released at any time for a hunt. He disagrees with the numbers represented in the staff report. He figures that if there are 5 hunters and 25 birds involved in a hunt each hunter will shoot 2-3 times at each bird. This amounts to 50-75 shots per hunt and there could be multiple groups out in a day. He stated that there are only 4 months each year in which they are legally unable to hunt.

Mr. R. Doherty stated that he does not agree with staff findings about noise on page 8. He feels the noise is not intermittent and limited. He feels that the findings demonstrate there were no studies done on the noise impact of the preserve on the neighborhood. He stated that any good business is going to try to grow to its fullest and in this case, that means more clients, traffic and noise. He acknowledges his area is very convenient for hunting because it is flat land with easy access. However, it is not convenient for the surrounding residents and he believes the letters he provided convey that same view. He expressed concern that property values will be affected because prospective home buyers will be deterred by all the shooting in the area. He believes the only people who will profit from this application being approved are the Ellis' and everyone else will lose the quiet enjoyment they once had on their property.

Commissioner Wysocki asked Mr. R. Doherty if he is a hunter. He stated that he has hunted many pheasants but he is frustrated that the number of birds on his property has declined over the years. He believes that the preserves have negatively affected the numbers of wild birds and its presence is destroying the neighborhood.

Opposition Testimony: Dennis Doherty, 44241 Rockwell Road, Pilot Rock, Oregon. Mr. D. Doherty stated that he and his wife, Kelly Doherty, contest the expansion of the Ellis Hunting Preserve on to the property owned by his neighbors, Jim and June Miller. Mr. D. Doherty stated that he owns a farm that borders the Miller and Ellis properties. He believes the expansion will increase the shooting noise by 1000% due to the unlimited number of hunters hunting next to his home. He stated that the Millers have never allowed hunting on their property before.

Mr. D. Doherty expressed concern about a potential increase in vehicle and foot traffic, barking dogs and overall noise but his primary concern is safety. He stated that his wife has a medical issue with one of her eyes and fears that one stray or misdirected shot could result in permanent blindness. Mr. D. Doherty stated that his neighbors will be impacted if this application is approved and asked the Planning Commissioners to put themselves in his position and to consider all the neighbors' concerns.

Mr. D. Doherty stated that he is upset that birds have been shot and left lying on the ground. He has made complaints with the ODFW office in Salem but nothing has been done. Chair Danforth stated that future formal complaints related to land use or the CUP conditions of approval should be directed to Umatilla County Code Enforcement for follow up and consideration during the annual review process. He presented a 2 page printed copy of the Ellis Hunting Ranch website under the "Bird Trophies" photo gallery link. Chair Danforth entered the document into the record as exhibit L. The document was distributed to the Planning Commissioners for review.

Opposition Testimony: Joe Deutz, 68815 Shaw Road, Pilot Rock, Oregon. Mr. Deutz presented 2 letters of opposition to the Planning Commissioners. The first letter (exhibit A) is from Joe and Jill Deutz and includes a partial article from the American Speech-Language-Hearing Association website titled, "Recreational Firearm Noise Exposure" by Michael Stuart, PhD, CCC-A, Professor of Audiology, Central Michigan University. The second letter (exhibit B) is from Joe Deutz. Chair Danforth added both letters to the hearing record. Mr. Deutz stated that he and his wife, Jill, have attended the hearing to oppose the CUP request for Ellis Hunting Ranch.

Mr. Deutz stated that the Findings and Conclusions provided by the Planning Department must be supported with evidence, but there is very little evidence provided. He pointed out that in the findings it is determined that, "[s]ome noise may be generated through the proposed use, however hunting will be intermittent and regulated by ODFW regulation." He asks for evidence to support that the hunting activities will be intermittent and wants more information about the regulations by ODFW that will help ensure this. According to the ODFW regulations he read, limits are placed on the season and hours allowed but no limits on the number of birds or gun shots. Therefore, there is no rule or regulation that suggests that hunting will be intermittent at this site.

Mr. Deutz stated that he believes this request to expand the hunting preserve suggests growth in the business. Growth in the business implies more hunters, more traffic and more gun fire which will ultimately lead to more conflict. Mr. Deutz referred to the partial American Speech-Language-Hearing Association website article included as part of exhibit A. The article addresses firearm noise and indicates that almost all firearms create a noise greater than 140 decibels (dB). It goes on to say that firing guns in a place where sounds can reverberate, or bounce off walls and other structures, can make noises louder. Mr. Deutz stated that the noise is a concern for all parties in opposition of this application. He feels like there is a lack of evidence to support the statement claiming that the noise will be intermittent and limited.

Mr. Deutz stated that he is used to dust, equipment noise, seasonal hunting and the occasional trespass by neighbors cattle while living in an EFU Zone. However, he does not feel he should have to put up

with the possibility of shotguns firing up to 8 months a year, 7 days a week, for 12 hours a day, across the road from his home. He did not anticipate that while living in a farm zone they would have to deal with increased traffic, litter and the crime that comes with nearby commercial activity. There are 4 rural residences within 150 yards of the proposed hunting preserve boundary. He feels the use conflicts with the neighboring pre-existing farms and residences. He believes it will force significant change and could lead to his property being considered less desirable because this activity will negatively affect families, pets and wildlife in the area.

Mr. Deutz stated that the applicant provided information stating that the CUP will not conflict with scenic values because the hunting activity will be intermittent and transitory in nature. He does not understand how information provided by the applicant is enough to decide if there truly is an impact on scenic values. He reiterated that a statement from the applicant does not qualify as evidence and there is no evidence in the findings to support this claim. Additionally, he feels that the hunting preserve falls under the definition of a 'facility' in Umatilla County and the criteria for approval of a facility is not addressed in the application.

Mr. Deutz stated that according to UCDC 152.612(C), "A conditional use permit or land use decision will not be approved unless the proposed use of the land will be in conformance with the County Comprehensive Plan". He feels this application must be denied because it fails to disclose how it would conform to the County Comprehensive Plan.

Commissioner Wysocki asked if Mr. Deutz is a hunter. Mr. Deutz stated that he no longer hunts birds but does hunt big game.

Chair Danforth asked how long he has lived in the area. Mr. Deutz stated that his family has owned the land for 30 years and built a home there 17 years ago. Chair Danforth pointed out that that he built a home there after Mr. Ellis originally received approval for the hunting preserve and asked if he has experienced any issues. Mr. Deutz stated that there have been no problems with additional traffic and the noise has been nominal.

Chair Wysocki asked what he feels would be a reasonable buffer zone for safety purposes. Mr. Deutz stated that his preference would be 300 yards.

Commissioner Royer asked if he has witnessed any hunting activity in the existing buffer zones. Mr. Deutz stated that he has not, but he is unable to see the buffer zone from his home.

Neutral Testimony: Gary Rhinhart, 1914 SW Sunset Drive Pendleton, Oregon. Mr. Rhinhart stated that he is neutral on this issue. He wanted to remind the Planning Commissioners that they have the authority to apply conditions to the approval of this application which may help to keep peace in the neighborhood.

Public Agencies: No additional comments.

Applicant Rebuttal: Paul Ellis, Applicant, 68685 Shaw Road, Pilot Rock, Oregon and Patrick Gregg, Attorney, Corey, Byler & Rew, LLP, 222 SE Dorion Avenue, Pendleton, Oregon.

Mr. Gregg stated that in the 18 years Ellis Hunting Ranch has been in operation there have been no complaints made to Code Enforcement. He feels like they would have heard something before today if there had been any serious concerns. He stated that this application is subject to the approval criteria which are set by Umatilla County and the State of Oregon and none of the issues raised by the opposition are related to approval criteria. He feels a speculative discussion about how approval may or may not impact property value is not an element used in analyzing this application. Similarly, he feels that whether or not ODFW effectively regulates the activities under their authority is not an issue for the Planning Commission to consider in processing this application.

Mr. Gregg stated that approval of this application would authorize a 15.3% increase in the size of the existing hunting preserve. There will be no new construction as a result of the application. They only wish to allow hunters to come on the property for hunting season and a few months before. It does not seem reasonable for the opponents to suggest this will result in a 1000% increase in the numbers of hunters and shooters at this site. He reiterated that the noise will be intermittent and limited. Mr. Gregg noted that Mr. Ellis was a certified outfitter by Oregon State, and was permitted to bring hunters onto land he has access to and charge clients to hunt. He noted that this was applicable to the incident that occurred on November 24th. They are not asking for approval for trap-shooting on this 122 acre property. They are asking it to be added into a preserve that allows certain bird hunting activities.

Mr. Gregg spoke about the buffer zone issue. The applicant doesn't feel that it will solve anything because they will be hunting in a different direction to the south. Additionally, there are already regulations in effect for hunting near roadways by ODF. He pointed out that the application has been signed by the property owner. He discussed how the application would not negatively impact farming practices in the area and that it complies with the Comprehensive Plan.

Mr. Ellis spoke about their application and that he wouldn't be doing this if he felt that it was negatively impacting the area. They shoot an average of 2,000 birds a year. He discussed their other preserve near Pilot Rock, and how they had not received any complaints in the last 18 years. Mr. Ellis said they will be operating from 9 a.m. through 3 p.m. most days. They typically do not hunt in August due to the heat, and in September they do archery hunts. He's fine with the proposed buffer but there is no need for a buffer on the east side of the creek. He said he had no knowledge of the November 24th incident, but they have operated for 18 years without any problems. He does not consider the buffer from the road a safety factor.

Mr. Gregg talked about the annual review condition, and how this should help alleviate any concerns that neighbors should have. People can also contact the Code Enforcement office if problems should arise in the future, even though there have never been any reports made to Code Enforcement in the past several years. He also discussed the noise standards and how there is a general lack of problems being reported in the past 18 years about noise concerns. Discussion followed on where the designated parking area will be clearly marked.

Chair Danforth asked how many hunters used the facility in the last year, and Mr. Ellis said they had between 300-400 hunters for all the preserves. This information is reported to ODFW each year, along with the number of released birds. Mr. Ellis talked about the dog training they do at the property and explained how that works. Commissioner Wysocki asked about the buffer, and Mr. Ellis said he would be completely fine with a 500 foot buffer. Discussion followed on the locations of the buffer. Chair Danforth talked about Condition #6, a 50 foot buffer extending east from Shaw Road, and Mr. Ellis said he agreed to this buffer but said the 300 foot buffer was just an “entrapment” area and shouldn’t be imposed. Mr. Gregg said that Tax Lot #4900 has been operating as a preserve for 18 years with no safety issues so this shouldn’t be an issue. Chair Danforth suggested a condition for increased signage to denote areas where they cannot shoot/hunt. Commissioner Wysocki asked if they were required to carry liability insurance. Mr. Ellis said that hunters must sign a release form before hunting. Discussion followed on the process that hunters must go through to use the preserve and what measures they have for safety and fire.

Chair Danforth closed the hearing for deliberation.

DELIBERATION

Commissioner Salter stated that he had concerns about the noise factor, but he did get better clarity from the applicant and now feels that it satisfies the standard. Commissioner Wysocki also expressed concerns about the noise. Commissioner Tucker-Hasenbank agreed that noise seemed to be the biggest factor for everyone concerned. She is familiar with the sound of gunshots reverberating off a canyon, and while it is annoying, does not rise to the standard of impacting quality of life. Commissioner Green said that it came down to being a good neighbor. Commissioner Royer commented that they had been in operation for many years without any documented complaints. Commissioner Tucker-Hasenbank said that this permit would only extend their usual hunting time by 3 months. Chair Danforth said that they could add a 500 foot buffer on the upper most west side, with signs posting the borders of the hunting preserve. Discussion followed on how many signs and where they should be located for the condition. It was decided to require the placement of signs every 600 feet across the buffer area.

Chair Danforth talked about the annual review condition and said that she would like to extend the annual review to 5 years. She added that the nearby property owners should be invited to a meeting yearly to discuss the permit and any problems that may arise. She used the gun club as an example for this meeting with adjacent property owners. Discussion followed on this proposed condition. Mr. Waldher suggested that the Code Enforcement Officer send copies of the annual report to adjacent land owners who received the public notice for the application for the first 5 years. Mr. Potterf asked that the designated parking areas be clearly defined on the final site map (Condition #4).

Commissioner Tucker-Hasenbank moved that the application, #C-1311-18 for the Ellis Hunting Preserve, be approved as amended with the following conditions; 500 foot buffer on the uppermost west side, clearly mark all parking areas on the site plan, place a Refuge sign every 600 feet around the buffer, and the annual review will be extended to 5 years with a summary of the annual review by the

County be sent to all landowners who received the public notice of the application. Commissioner Wysocki seconded the motion. Motion passed with a vote of 6:1.

MINUTES

Chair Danforth called for any corrections to the minutes from the October 25, 2018 meeting. Hearing none, she moved to approve the minutes as written and Commissioner Thorne seconded it. Motion carried by consensus.

ADJOURNMENT

Chair Danforth Adjourned the meeting at 9:28 p.m.

Respectfully submitted,

Tierney Dutcher
Administrative Assistant

Minutes adopted by the Planning Commission on February 28, 2019.